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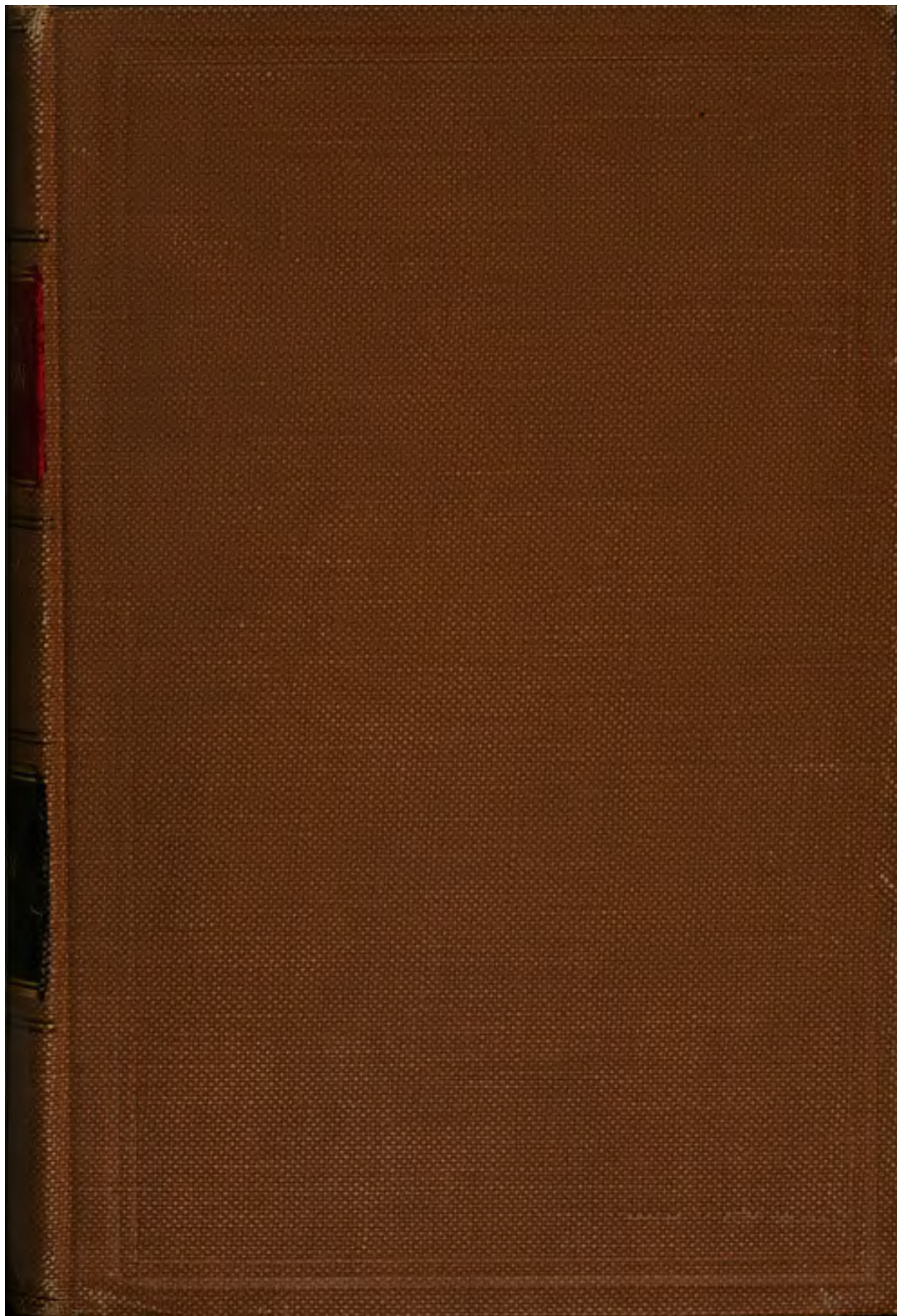
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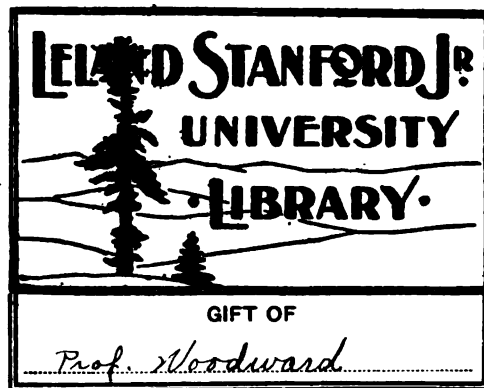
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THE HAGUE ARBITRATION CASES

COMPROMIS AND AWARDS WITH MAPS IN
CASES DECIDED UNDER THE PROVISIONS
OF THE HAGUE CONVENTIONS OF 1899 AND
1907 FOR THE PACIFIC SETTLEMENT OF
INTERNATIONAL DISPUTES AND TEXTS
OF THE CONVENTIONS

BY

GEORGE GRAFTON WILSON, LL.D.

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1915 *dw*

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TO
THE FACULTY OF LAW
OF THE UNIVERSITY OF PARIS
FROM A COLLEAGUE
IN 1912-1913

PREFACE

The substantial work already accomplished by the tribunal of arbitration established at The Hague under the provisions of the Conventions for the Pacific Settlement of International Disputes has often been underestimated. This underestimate has in many instances been due to the fact that the evidence of the real accomplishments of the tribunal has not been available for judgment. It is true that much has been written about the work of the tribunal, but at the same time it has been exceedingly difficult to learn exactly what the questions before the tribunal have been and how they have been settled. The awards which have been made by the tribunal at The Hague since its establishment have not before been gathered in generally accessible form. The compromis containing the relation of the facts and conditions under which a given case has been submitted is often more difficult to find than the award even in a well-supplied library, and in most libraries cannot be found at all. The language of the compromis or of the award may in some of the cases be a barrier to easy consultation.

In this book the compromis of each case is given as well as the award. The official language is always given, and when this is not English, for convenience, and upon the opposite page, a somewhat literal translation is furnished. When the compromis or the award is in language other than English and there is an official translation into English, this official translation only is given. Accordingly, in the Japanese House Tax case where the compromis was drawn in German, French, Japanese, and English, only the English form is given, as that is equally official. In the Norwegian-Swedish Frontier case the two languages are given, with the translation, and in like manner the two languages of the compromis in the Canevaro Claim case.

Maps, some of which were specially prepared for this collection, are inserted where necessary to make clear the award of the tribunal.

For convenience the Hague conventions under which the court has been constituted are given in the Appendix.

To facilitate reference there is inserted in the general index a detailed index under each case.

The fifteen cases upon which the court has acted show that the resort to arbitration as a means of settlement of international disputes has become common in the early days of the twentieth century. The cases already brought before the tribunal at The Hague have involved questions and events relating to Europe, Asia, Africa, North America, and South America. The scope of questions has also been wide. Financial claims have been passed upon frequently, but such questions as the right to fly the flag, the violation of territory, the delimitation of boundaries, and other questions involving the fundamental rights of states have likewise been considered. Some cases have been simple and have occupied the attention of a tribunal but a short time ; others have been complex and elaborately and lengthily argued.

The first case, the Pious Fund case of 1902, was between two American states. The second, the Venezuela Preferential Claims case in the following year, concerned three American and eight European powers. In the third case, the Japanese House Tax of 1904, three European and one Asiatic power appeared. The fourth case, the Muscat Dhows, was brought by two European powers in regard to the right of certain Asiatics to fly a flag.* The fifth, the Casablanca, was also brought by two European powers but in regard to respective rights of jurisdiction in Africa. The sixth, the Norwegian-Swedish Frontier arbitration, was the first purely European difference settled by the tribunal. The later cases have shown similar range of subject matter and geographical distribution. In about one half the cases no nationals of the parties to the controversy have sat as arbitrators, and in the other cases nationals of the contending parties have been appointed. Nearly one half the cases have been before three judges, and all but one of the remaining cases before five judges. Of the six arbitrators sitting in the cases decided in 1913 and 1914, each arbitrator had previously sat upon at least one case at The Hague and some had already appeared in several cases. France has been a party in six cases, Great Britain in five, the United States in four, Germany and Italy in three each, and several states in two or only in one. Seventeen

different states in all have been parties in cases before the Hague tribunal. These facts show an established confidence in the tribunal and in its personnel. It certainly has a worthy record in achievement, as shown by the number and the varied nature of the causes brought before it, by the wide geographical distribution of the states appearing as parties, and by the readiness with which all parties have accepted the tribunal's decision.

While the arguments of counsel have often occupied the attention of the tribunal for many days and have filled many volumes, the compromise and award in each case as here printed furnish the official material essential for a comprehensive understanding of the recent development of arbitral methods in the settlement of international differences.

Acknowledgments are due to the officials of the Department of State of the United States, to officials of the foreign offices of other states, to members of the permanent court of arbitration, and particularly to the secretaries of this court, who have willingly given valued assistance.

GEORGE GRAFTON WILSON

CAMBRIDGE, AUGUST, 1914

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I

UNITED STATES AND MEXICO

PIOUS FUND OF THE CALIFORNIAS

COMPROMIS, MAY 22, 1902

SESSIONS, SEPTEMBER 15, 1902-OCTOBER 1, 1902, THE HAGUE

AWARD, OCTOBER 14, 1902

ARBITRATORS, MATZEN, FRY, MARTENS, ASSER, DE SAVORNIN LOHMAN

PROTOCOL OF A COMPROMIS BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF MEXICO FOR THE ADJUSTMENT OF CERTAIN CONTENTIONS ARISING UNDER WHAT IS KNOWN AS "THE PIOUS FUND OF THE CALIFORNIAS"

Whereas, under and by virtue of the provisions of a convention entered into between the High Contracting Parties above named, of date July 4, 1868, and subsequent conventions supplementary thereto, there was submitted to the Mixed Commission¹ provided for by said Convention, a certain claim advanced by and on behalf of the prelates of the Roman Catholic Church of California against the Republic of Mexico for an annual interest upon a certain fund known as "The Pious Fund of the Californias," which interest was said to have accrued between February 2, 1848, the date of the signature of the Treaty of Guadalupe Hidalgo, and February 1, 1869, the date of the exchange of the ratifications of said Convention above referred to; and

Whereas, said Mixed Commission, after considering said claim, the same being designated as No. 493 upon its docket, and entitled Thaddeus Amat, Roman Catholic Bishop of Monterey, a corporation sole, and Joseph S. Alemany, Roman Catholic Bishop of San Fran-

¹ For rules and regulations of the Commission see Sen. Doc. No. 28, 57th Cong. 2d Sess. p. 166.

cisco, a corporation sole, against The Republic of Mexico, adjudged the same adversely to the Republic of Mexico and in favor of said claimants, and made an award thereon of Nine Hundred and Four Thousand, Seven Hundred and 99/100 (904,700.99) Dollars; the same, as expressed in the findings of said Court, being for twenty-one years' interest of the annual amount of Forty-three Thousand and Eighty and 99/100 (43,080.99) Dollars upon Seven Hundred and Eighteen Thousand and Sixteen and 50/100 (718,016.50) Dollars, said award being in Mexican gold dollars, and the said amount of Nine Hundred and Four Thousand, Seven Hundred and 99/100 (904,700.99) Dollars having been fully paid and discharged in accordance with the terms of said convention; and

Whereas, the United States of America on behalf of said Roman Catholic Bishops, above named, and their successors in title and interest, have since such award claimed from Mexico further installments of said interest, and have insisted that the said claim was conclusively established, and its amount fixed as against Mexico and in favor of said original claimants and their successors in title and interest under the said first mentioned convention of 1868 by force of the said award as *res judicata*; and have further contended that apart from such former award their claim against Mexico was just, both of which propositions are controverted and denied by the Republic of Mexico, and the High Contracting Parties hereto, animated by a strong desire that the dispute so arising may be amicably, satisfactorily and justly settled, have agreed to submit said controversy to the determination of Arbitrators, who shall, unless otherwise herein expressed, be controlled by the provisions of the International Convention for the pacific settlement of international disputes, commonly known as The Hague Convention, and which arbitration shall have power to determine:

1. If said claim, as a consequence of the former decision, is within the governing principle of *res judicata*; and,
2. If not, whether the same be just.

And to render such judgment or award as may be meet and proper under all the circumstances of the case.

It is therefore agreed by and between the United States of America, through their representative, John Hay, Secretary of State of the United States of America, and the Republic of Mexico, through its representative, Manuel de Azpiroz, Ambassador Extraordinary and Plenipotentiary to the United States of America for the Republic of Mexico as follows:

I

That the said contentions be referred to the special tribunal hereinafter provided, for examination, determination and award.

II

The special tribunal hereby constituted shall consist of four arbitrators, (two to be named by each of the High Contracting Parties) and an umpire to be selected in accordance with the provisions of the Hague Convention. The arbitrators to be named hereunder shall be signified by each of the High Contracting Parties to the other within sixty days after the date of this protocol. None of those so named shall be a native or citizen of the parties hereto. Judgment may be rendered by a majority of said court.

All vacancies occurring among the members of said court because of death, retirement or disability from any cause before a decision shall be reached, shall be filled in accordance with the method of appointment of the member affected as provided by said Hague Convention, and if occurring after said court shall have first assembled, will authorize in the judgment of the court an extension of time for hearing or judgment, as the case may be, not exceeding thirty days.

III

All pleadings, testimony, proofs, arguments of counsel and findings or awards of commissioners or umpire, filed before or arrived at by the Mixed Commission above referred to, are to be placed in evidence before the Court hereinbefore provided for, together with all correspondence between the two countries relating to the subject matter involved in this arbitration; originals or copies thereof duly certified by the Departments of State of the High Contracting Parties being presented to said new tribunal. Where printed books

4 **PROTOCOL UNITED STATES AND MEXICO**

are referred to in evidence by either party, the party offering the same shall specify volume, edition and page of the portion desired to be read, and shall furnish the Court in print the extracts relied upon; their accuracy being attested by affidavit. If the original work is not already on file as a portion of the record of the former Mixed Commission, the book itself shall be placed at the disposal of the opposite party in the respective offices of the Secretary of State or of the Mexican Ambassador in Washington, as the case may be, thirty days before the meeting of the tribunal herein provided for.

IV

Either party may demand from the other the discovery of any fact or of any document deemed to be or to contain material evidence for the party asking it; the document desired to be described with sufficient accuracy for identification, and the demanded discovery shall be made by delivering a statement of the fact or by depositing a copy of such document (certified by its lawful custodian, if it be a public document, and verified as such by the possessor, if a private one), and the opposite party shall be given the opportunity to examine the original in the City of Washington at the Department of State, or at the office of the Mexican Ambassador, as the case may be. If notice of the desired discovery be given too late to be answered ten days before the tribunal herein provided for shall sit for hearing, then the answer desired thereto shall be filed with or documents produced before the court herein provided for as speedily as possible.

V

Any oral testimony additional to that in the record of the former arbitration may be taken by either party before any Judge or Clerk of Court of Record, or any Notary Public, in the manner and with the precautions and conditions prescribed for that purpose in the rules of the Joint Commission of the United States of America, and the Republic of Mexico, as ordered and adopted by that tribunal August 10, 1869, and so far as the same may be applicable. The testimony when reduced to writing, signed by the witness, and authenticated by the officer before whom the same is taken, shall be

sealed up, addressed to the court constituted hereby, and deposited so sealed up in the Department of State of the United States, or in the Department of Foreign Relations of Mexico to be delivered to the Court herein provided for when the same shall convene.

VI

Within sixty days from the date hereof the United States of America, through their agent or counsel, shall prepare and furnish to the Department of State aforesaid, a memorial in print of the origin and amount of their claim, accompanied by references to printed books, and to such portions of the proofs or parts of the record of the former arbitration, as they rely on in support of their claim, delivering copies of the same to the Embassy of the Republic of Mexico in Washington, for the use of the agent or counsel of Mexico.

VII

Within forty days after the delivery thereof to the Mexican Embassy the agent or counsel for the République of Mexico shall deliver to the Department of State of the United States of America in the same manner and with like references a statement of its allegations and grounds of opposition to said claim.

VIII

The provisions of paragraphs VI and VII shall not operate to prevent the agents or counsel for the parties hereto from relying at the hearing or submission upon any documentary or other evidence which may have become open to their investigation and examination at a period subsequent to the times provided for service of memorial and answer.

IX

The first meeting of the arbitral court hereinbefore provided for shall take place for the selection of an umpire on September 1, 1902, at The Hague in the quarters which may be provided for such purpose by the International Bureau at The Hague, constituted by virtue of The Hague convention hereinbefore referred to, and for the commencement of its hearings September 15, 1902, is designated, or, if an umpire may not be selected by said date, then as soon as

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possible thereafter, and not later than October 15, 1902, at which time and place and at such other times as the court may set (and at Brussels if the court should determine not to sit at The Hague) explanations and arguments shall be heard or presented as the court may determine, and the cause be submitted. The submission of all arguments, statements of facts, and documents shall be concluded within thirty days after the time provided for the meeting of the court for hearing (unless the court shall order an extension of not to exceed thirty days) and its decision and award announced within thirty days after such conclusion, and certified copies thereof delivered to the agents or counsel of the respective parties and forwarded to the Secretary of State of the United States and the Mexican Ambassador at Washington, as well as filed with the Netherland Minister for Foreign Affairs.

X

Should the decision and award of the tribunal be against the Republic of Mexico, the findings shall state the amount and in what currency the same shall be payable, and shall be for such amount as under the contentions and evidence may be just. Such final award, if any, shall be paid to the Secretary of State of the United States of America within eight months from the date of its making.

XI

The agents and counsel for the respective parties may stipulate for the admission of any facts, and such stipulation, duly signed, shall be accepted as proof thereof.

XII

Each of the parties hereto shall pay its own expenses, and one-half of the expenses of the arbitration, including the pay of the arbitrators; but such costs shall not constitute any part of the judgment.

XIII

Revision shall be permitted as provided in Article LV of The Hague Convention, demand for revision being made within eight days after announcement of the award. Proofs upon such demand

shall be submitted within ten days after revision be allowed (revision only being granted, if at all, within five days after demand therefor) and counterproofs within the following ten days, unless further time be granted by the Court. Arguments shall be submitted within ten days after the presentation of all proofs, and a judgment or award given within ten days thereafter. All provisions applicable to the original judgment or award shall apply as far as possible to the judgment or award on revision. *Provided* that all proceedings on revision shall be in the French language.

XIV

The award ultimately given hereunder shall be final and conclusive as to the matters presented for consideration.

Done in duplicate of English and Spanish at Washington, this 22d day of May, A.D. 1902.

JOHN HAY [SEAL]
M. DE AZPIROZ [SEAL]

THE AWARD OF THE PERMANENT COURT OF ARBITRATION IN
THE MATTER OF THE PIOUS FUND OF THE CALIFORNIAS, REN-
DERED OCTOBER 14, 1902

The tribunal of arbitration constituted by virtue of the treaty concluded at Washington, May 22, 1902, between the United States of America and the United Mexican States.

Whereas, by a compromis (agreement of arbitration) prepared under the form of protocol between the United States of America and the United Mexican States, signed at Washington, May 22, 1902, it was agreed and determined that the differences which existed between the United States of America and the United Mexican States, relative to the subject of the "Pious Fund of the Californias," the annuities of which were claimed by the United States of America for the benefit of the Archbishop of San Francisco and the Bishop of Monterey, from the Government of the Mexican Republic, should be submitted to a tribunal of arbitration, constituted upon the bases of the convention for the pacific settlement of

international disputes, signed at The Hague, July 29, 1899, which should be composed in the following manner — that is to say :

The President of the United States of America should designate two arbitrators (nonnationals), and the President of the United Mexican States equally two arbitrators (nonnationals); these four arbitrators should meet September 1, 1902, at The Hague, for the purpose of nominating the umpire, who at the same time should be of right the president of the Tribunal of Arbitration.

Whereas the President of the United States of America named as arbitrators :

The Right Hon. Sir Edward Fry, LL.D., former member of the court of appeals, member of the privy council of His Britannic Majesty, member of the Permanent Court of Arbitration; and

His Excellency M. de Martens, LL.D., privy councilor, member of the council of the imperial ministry of foreign affairs of Russia, member of the Institute of France, member of the Permanent Court of Arbitration.

Whereas the President of the United Mexican States named as arbitrators :

Mr. T. M. C. Asser, LL.D., member of the council of state of the Netherlands, former professor at the University of Amsterdam, member of the Permanent Court of Arbitration; and

Jonkheer A. F. de Savornin Lohman, LL.D., former minister of the interior of the Netherlands, former professor at the Free University at Amsterdam, member of the second chamber of the States-General, member of the Permanent Court of Arbitration; which arbitrators at their meeting, September 1, 1902, elected, conformably to articles 32-34 of the Convention of The Hague of July 29, 1899, as umpire and president of right of the Tribunal of Arbitration.

Mr. Henning Matzen, LL.D., professor at the University of Copenhagen, councilor extraordinary to the supreme court, president of the Landsting, member of the Permanent Court of Arbitration; and

Whereas, by virtue of the protocol of Washington of May 22, 1902, the above-named arbitrators, united in tribunal of arbitration, were required to decide :

1. If the said claim of the United States of America for the benefit of the Archbishop of San Francisco and the Bishop of Monterey was within the governing principle of *res judicata* by virtue of the arbitral sentence of November 11, 1875, pronounced by Sir Edward Thornton, as umpire.

2. If not, whether the said claim was just, with power to render such judgment as would seem to them just and equitable.

Whereas, the above-named arbitrators having examined with impartiality and care all the documents and papers presented to the tribunal of arbitration by the agents of the United States of America and of the United Mexican States, and having heard with the greatest attention the oral arguments presented before the tribunal by the agents and the counsel of the two parties in litigation ;

Considering that the litigation submitted to the decision of the tribunal of arbitration consists in a conflict between the United States of America and the United Mexican States, which can only be decided upon the basis of international treaties and the principles of international law ;

Considering that the international treaties concluded from the year 1848 to the compromis of May 22, 1902, between the two powers in litigation, manifest the eminently international character of this conflict ;

Considering that all the parts of the judgment or the decree concerning the points debated in the litigation enlighten and mutually supplement each other, and that they all serve to render precise the meaning and the bearing of the dispositif (decisory part of the judgment) and to determine the points upon which there is *res judicata* and which thereafter can not be put in question ;

Considering, that this rule applies not only to the judgments of tribunals created by the State, but equally to arbitral sentences rendered within the limits of the jurisdiction fixed by the compromis ;

Considering, that this same principle should for a still stronger reason be applied to international arbitration ;

Considering, that the convention of July 4, 1868, concluded between the two States in litigation, had accorded to the Mixed

Commission named by these States, as well as to the umpire to be eventually designated, the right to pass upon their own jurisdiction;

Considering, that in the litigation submitted to the decision of the Tribunal of Arbitration, by virtue of the compromis of May 22, 1902, there is not only identity of parties to the suit, but also identity of subject-matter, compared with the arbitral sentence of Sir Edward Thornton, as umpire, in 1875, and amended by him October 24, 1876;

Considering, that the Government of the United Mexican States conscientiously executed the arbitral sentence of 1875 and 1876 by paying the annuities adjudged by the umpire;

Considering, that since 1869 thirty-three annuities have not been paid by the Government of the United Mexican States to the Government of the United States of America, and that the rules of prescription, belonging exclusively to the domain of civil law, can not be applied to the present dispute between the two States in litigation;

Considering, so far as the money is concerned in which the annual payment should take place, that the silver dollar, having legal currency in Mexico, payment in gold can not be exacted, except by virtue of an express stipulation;

Considering that in the present instance such stipulation not existing, the party defendant has the right to free itself by paying in silver; that with relation to this point the sentence of Sir Edward Thornton has not the force of *res judicata*, except for the twenty-one annuities with regard to which the umpire decided that the payment should take place in Mexican gold dollars, because question of the mode of payment does not relate to the basis of the right in litigation, but only to the execution of the sentence.

Considering, that according to article 10 of the protocol of Washington, of May 22, 1902, the present Tribunal of Arbitration must determine, in case of an award against the Republic of Mexico, in what money payment must take place;

For these reasons the Tribunal of Arbitration decides and unanimously pronounces as follows:

1. That the said claim of the United States of America for the benefit of the Archbishop of San Francisco and of the Bishop of Monterey is governed by the principle of *res judicata* by virtue of the arbitral sentence of Sir Edward Thornton, of November 11, 1875; amended by him October 24, 1876.

2. That conformably to this arbitral sentence, the Government of the Republic of the United Mexican States must pay to the Government of the United States of America the sum of \$1,420,682.67 Mexican, in money having legal currency in Mexico, within the period fixed by article 10 of the protocol of Washington of May 22, 1902.

This sum of \$1,420,682.67 will totally extinguish the annuities accrued and not paid by the Government of the Mexican Republic — that is to say, the annuity of \$43,050.99 Mexican from February 2, 1869, to February 2, 1902.

3. The Government of the Republic of the United Mexican States shall pay to the Government of the United States of America on February 2, 1903, and each following year on the same date of February 2, perpetually, the annuity of \$43,050.99 Mexican, in money having legal currency in Mexico.

Done at The Hague in the hotel of the Permanent Court of Arbitration in triplicate original, October 14, 1902.

HENNING MATZEN

EDW. FRY

MARTENS

T. M. C., ASSER

A. F. DE SAVORNIN LOHMAN

II

GERMANY, GREAT BRITAIN AND ITALY, AND
VENEZUELA, BELGIUM, SPAIN, UNITED STATES,
FRANCE, MEXICO, NETHERLANDS, AND SWEDEN
AND NORWAY

PREFERENTIAL TREATMENT OF CLAIMS OF BLOCKAD-
ING POWERS AGAINST VENEZUELA

COMPROMIS, FEBRUARY 13, 1903-MAY 7, 1903

SESSIONS, OCTOBER 1, 1903-NOVEMBER 13, 1903, THE HAGUE

AWARD, FEBRUARY 22, 1904

ARBITRATORS, MOURAWIEFF, LAMMASCH, MARTENS

PROTOCOL BETWEEN GERMANY AND VENEZUELA RELATING TO
THE SETTLEMENT OF THE GERMAN CLAIMS

Signed at Washington, February 13, 1903

Whereas certain differences have arisen between Germany and the United States of Venezuela in connection with the claims of German subjects against the Venezuelan Government, the undersigned, Baron Speck von Sternburg, His Imperial German Majesty's envoy extraordinary and minister plenipotentiary, duly authorized by the Imperial German Government, and Mr. Herbert W. Bowen, duly authorized by the Government of Venezuela, have agreed as follows :

ARTICLE I

The Venezuelan Government recognize in principle the justice of the claims of German subjects presented by the Imperial German Government.

ARTICLE 2

The German claims originating from the Venezuelan civil wars of 1898 to 1900 amount to 1,718,815.67 bolivares. The Venezuelan Government undertake to pay of said amount immediately in cash the sum of £5,500 = 137,500 bolivares (five thousand five hundred pounds = one hundred thirty-seven thousand five hundred bolivares), and for the payment of the rest to redeem five bills of exchange for the corresponding installments, payable on the 15th of March, the 15th of April, the 15th of May, the 15th of June, and the 15th of July, 1903, to the Imperial German diplomatic agent in Carácas. These bills shall be drawn immediately by Mr. Bowen and handed over to Baron Sternburg.

Should the Venezuelan Government fail to redeem one of these bills, the payment shall be made from the customs receipts of La Guayra and Puerto Cabello, and the administration of both ports shall be put in charge of Belgian custom-house officials until the complete extinction of the said debts.

ARTICLE 3

The German claims not mentioned in the articles 2 and 6, in particular the claims resulting from the present Venezuelan civil war, the claims of the Great Venezuelan Railroad Company against the Venezuelan Government for passages and freight, the claims of the engineer, Carl Henkel, in Hamburg, and of the Beton and Monierbau Company (Limited), in Berlin, for the construction of a slaughterhouse at Carácas are to be submitted to a mixed commission.

Said commission shall decide both whether the different claims are materially well founded and also upon their amount. The Venezuelan Government admit their liability in cases where the claim is for injury to, or wrongful seizure of, property, and consequently the commission will not have to decide the question of liability, but only whether the injury to or the seizure of property were wrongful acts and what amount of compensation is due.

ARTICLE 4

The mixed commission mentioned in article 3 shall have its seat in Carácas. It shall consist of two members, one of which is to be

appointed by the Imperial German Government, the other by the Government of Venezuela. The appointments are to be made before May 1, 1903. In each case where the two members come to an agreement on the claims their decision shall be considered as final. In cases of disagreement the claims shall be submitted to the decision of an umpire to be nominated by the President of the United States of America.

ARTICLE 5

For the purpose of paying the claims specified in article 3, as well as similar claims preferred by other powers, the Venezuelan Government shall remit to the representative of the Bank of England in Carácas in monthly installments, beginning from March 1, 1903, 30 per cent of the customs revenues of La Guayra and Puerto Cabello, which shall not be alienated to any other purpose. Should the Venezuelan Government fail to carry out this obligation Belgian customs officials shall be placed in charge of the customs of the two ports and shall administer them until the liabilities of the Venezuelan Government in respect of the above-mentioned claims shall have been discharged.

Any questions as to the distribution of the customs revenues specified in the foregoing paragraph, as well as to the rights of Germany, Great Britain, and Italy to a separate payment of their claims, shall be determined, in default of another agreement, by the Permanent Tribunal of Arbitration at The Hague. All other powers interested may join as parties in the arbitration proceedings against the above-mentioned three powers.

ARTICLE 6

The Venezuelan Government undertake to make a new satisfactory arrangement to settle simultaneously the 5 per cent Venezuelan loan of 1896, which is chiefly in German hands, and the entire exterior debt. In this arrangement the State revenues to be employed for the service of the debt are to be determined without prejudice to the obligations already existing.

ARTICLE 7

The Venezuelan men-of-war and merchant vessels captured by the German naval forces shall be returned to the Venezuelan

Government in their actual condition. No claims for indemnity can be based on the capture and on the holding of these vessels; neither will an indemnity be granted for injury to or destruction of the same.

ARTICLE 8

Immediately upon the signature of this protocol the blockade of the Venezuelan ports shall be raised by the Imperial German Government in concert with the Governments of Great Britain and Italy. Also the diplomatic relations between the Imperial German and the Venezuelan Government will be resumed.

Done in duplicate in German and English texts at Washington this thirteenth day of February, one thousand nine hundred and three.

(Signed)
(Signed)

STERNBURG
HERBERT W. BOWEN

PROTOCOL BETWEEN THE UNITED KINGDOM AND THE UNITED STATES OF VENEZUELA RELATING TO THE SETTLEMENT OF THE BRITISH CLAIMS AND OTHER MATTERS

Signed at Washington, February 13, 1903

Whereas certain differences have arisen between Great Britain and the United States of Venezuela in connection with the claims of British subjects against the Venezuelan Government, the undersigned, His Excellency the Right Honorable Sir Michael H. Herbert, K.C.M.G., C.B., His Britannic Majesty's ambassador extraordinary and plenipotentiary to the United States of America, and Mr. Herbert W. Bowen, duly authorized thereto by the Government of Venezuela, have agreed as follows :

ARTICLE I

The Venezuelan Government declare that they recognize in principle the justice of the claims which have been preferred by His Majesty's Government on behalf of British subjects.

ARTICLE II

The Venezuelan Government will satisfy at once, by payment in cash or its equivalent, the claims of British subjects, which amount to about £5,500, arising out of the seizure and plundering of British vessels and the outrages on their crews, and the maltreatment and false imprisonment of British subjects.

ARTICLE III

The British and Venezuelan Governments agree that the other British claims, including claims by British subjects other than those dealt with in Article VI hereof, and including those preferred by the railway companies, shall, unless otherwise satisfied, be referred to a mixed commission constituted in the manner defined in Article IV of this protocol, and which shall examine the claims and decide upon the amount to be awarded in satisfaction of each claim.

The Venezuelan Government admit their liability in cases where the claim is for injury to, or wrongful seizure of, property, and consequently the questions which the mixed commission will have to decide in such cases will only be —

(a) Whether the injury took place, and whether the seizure was wrongful; and

(b) If so, what amount of compensation is due.

In other cases the claims shall be referred to the mixed commission without reservation.

ARTICLE IV

The mixed commission shall consist of one British member and one Venezuelan member. In each case where they come to an agreement, their decision shall be final. In cases of disagreement, the claims shall be referred to the decision of an umpire nominated by the President of the United States of America.

ARTICLE V

The Venezuelan Government being willing to provide a sum sufficient for the payment within a reasonable time of the claims specified in Article III and similar claims preferred by other Governments, undertake to assign to the British Government, commencing

the 1st day of March, 1903, for this purpose, and to alienate to no other purpose, 30 per cent in monthly payments of the customs revenues of La Guayra and Puerto Cabello. In the case of failure to carry out this undertaking, Belgium officials shall be placed in charge of the customs of the two ports, and shall administer them until the liabilities of the Venezuelan Government, in respect of the above-mentioned claims, shall have been discharged.

Any question as to the distribution of the customs revenues so to be assigned and as to the rights of Great Britain, Germany, and Italy to a separate settlement of their claims, shall be determined, in default of arrangement, by the tribunal at The Hague, to which any other power interested may appeal.

Pending the decision of The Hague Tribunal, the said 30 per cent of the receipts of the customs of the ports of La Guayra and Puerto Cabello are to be paid over to the representatives of the Bank of England at Carácas.

ARTICLE VI

The Venezuelan Government further undertake to enter into a fresh arrangement respecting the external debt of Venezuela, with a view to the satisfaction of the claims of the bondholders. This arrangement shall include a definition of the sources from which the necessary payments are to be provided.

ARTICLE VII

The British and Venezuelan Governments agree that, inasmuch as it may be contended that the establishment of a blockade of Venezuelan ports by the British naval forces has, ipso facto, created a state of war between Great Britain and Venezuela, and that any treaty existing between the two countries has been thereby abrogated, it shall be recorded in an exchange of notes between the undersigned that the convention between Great Britain and Venezuela of October 29, 1834, which adopted and confirmed, *mutatis mutandis*, the treaty of April 18, 1825, between Great Britain and the State of Colombia, shall be deemed to be renewed and confirmed, or provisionally renewed and confirmed, pending conclusion of a new treaty of amity and commerce.

ARTICLE VIII

Immediately upon the signature of this protocol arrangements will be made by His Majesty's Government, in concert with the Governments of Germany and Italy, to raise the blockade of the Venezuelan ports.

His Majesty's Government will be prepared to restore the vessels of the Venezuelan navy which have been seized, and further to release any other vessels captured under the Venezuelan flag, on the receipt of a guarantee from the Venezuelan Government that they will hold His Majesty's Government indemnified in respect of any proceedings which might be taken against them by the owners of such ships or of goods on board them.

ARTICLE IX

The treaty of amity and commerce of October 29, 1834, having been confirmed in accordance with the terms of Article VII of this protocol, His Majesty's Government will be happy to renew diplomatic relations with the Government of Venezuela.

Done in duplicate at Washington, this 13th day of February, 1903.

(Signed)
(Signed)

MICHAEL H. HERBERT
HERBERT W. BOWEN

PROTOCOL BETWEEN ITALY AND VENEZUELA RELATING TO THE
SETTLEMENT OF ITALIAN CLAIMS

Signed at Washington, February 13, 1903

Whereas certain differences have arisen between Italy and the United States of Venezuela in connection with the Italian claims against the Venezuelan Government, the undersigned, His Excellency Nobile Edmondo Mayor des Planches, commander of the Orders of SS. Maurice and Lazarus and the Crown of Italy, ambassador extraordinary and plenipotentiary of His Majesty the King of Italy to the United States of America, and Mr. Herbert W. Bowen, duly authorized thereto by the Government of Venezuela, have agreed as follows:

ARTICLE 1

The Venezuelan Government declare that they recognize in principle the justice of the claims which have been preferred by His Majesty's Government on behalf of Italian subjects.

ARTICLE 2

The Venezuelan Government agree to pay to the Italian Government, as a satisfaction of the point of honor, the sum of £5,500 (five thousand five hundred pounds sterling), in cash or its equivalent, which sum is to be paid within sixty days.

ARTICLE 3

The Venezuelan Government recognize, accept, and will pay the amount of the Italian claims of the first rank derived from the revolutions of 1898-1900, in the sum of 2,810,255 (two millions eight hundred and ten thousand two hundred and fifty-five) bolívares.

It is expressly agreed that the payment of the above Italian claims of the first rank will be made without being the same claims or the same sum submitted to the mixed commission and without any revision or objection.

ARTICLE 4

The Italian and Venezuelan Governments agree that all the remaining Italian claims, without exception, other than those dealt with in Article VII hereof, shall, unless otherwise satisfied, be referred to a mixed commission to be constituted, as soon as possible, in the manner defined in Article VI of the protocol, and which shall examine the claims and decide upon the amount to be awarded in satisfaction of each.

The Venezuelan Government admit their liability in cases where the claim is for injury to persons and property and for wrongful seizure of the latter, and consequently the questions, which the mixed commission will have to decide in such cases, will only be:

- (a) Whether the injury took place or whether the seizure was wrongful; and
- (b) If so, what amount of compensation is due.

In other cases the claims will be referred to the mixed commission without reservation.

ARTICLE 5

The Venezuelan Government being willing to provide a sum sufficient for the payment, within a reasonable time, of the claims specified in Articles III and IV and similar claims preferred by other governments, undertake and obligate themselves to assign to the Italian Government, commencing the first day of March, 1903, for this purpose, and to alienate to no other purpose, 30 per cent of the custom revenues of La Guayra and Puerto Cabello. In the case of failure to carry out this undertaking and obligation, Belgian officials shall be placed in charge of the two ports, and shall administer them until the liabilities of the Venezuelan Government, in respect of the above-mentioned claims, shall have been discharged.

Any question as to the distribution of the custom revenues so to be assigned, and as to the rights of Italy, Great Britain, and Germany to a separate settlement of their claims, shall be determined, in default of arrangement, by the tribunal at The Hague, to which any other power interested may appeal.

Pending the decision of The Hague Tribunal the said 30 per cent of the receipts of the customs of the ports of La Guayra and Puerto Cabello are to be paid over to the representatives of the Bank of England at Carácas.

ARTICLE 6

The mixed commission shall consist of one Italian member and one Venezuelan member.

The Government of Venezuela hereby obligate themselves and guarantee that the Italian Government shall be wholly exempted and relieved from any reclamations or claims of any kind which may be made by citizens or corporations of Venezuela or by citizens or corporations of any other nation, for detention, or seizure, or destruction of any vessel, or of goods on board of them which may have been or which may be detained, seized, or destroyed by reason of the blockade instituted and carried on by the three allied powers against the Republic of Venezuela.

In each case, where they come to an agreement, their decision

shall be final. In case of disagreement, the claims shall be referred to the decision of an umpire nominated by the President of the United States of America.

ARTICLE 7

The Venezuelan Government further undertake to enter into a fresh arrangement respecting the external debt of Venezuela with a view to the satisfaction of the claims of the bondholders. This arrangement shall include a definition of the sources from which the necessary payments are to be provided.

ARTICLE 8

The treaty of amity, commerce, and navigation between Italy and Venezuela of June 19th, 1861, is renewed and confirmed. It is, however, expressly agreed between the two Governments that the interpretation to be given to the articles 4 and 26 is the following :

According to the article 4, Italians in Venezuela and Venezuelans in Italy can not in any case receive a treatment less favorable than the natives, and, according to article 26, Italians in Venezuela and Venezuelans in Italy are entitled to receive, in every matter and especially in the matter of claims, the treatment of the most favored nation, as it is established in the same article 26.

If there is doubt or conflict between the two articles, the article 26 will be followed.

It is further specifically agreed that the above treaty shall never be invoked, in any case, against the provisions of the present protocol.

ARTICLE 9

At once upon the signing of this protocol, arrangements shall be made by His Majesty's Government, in concert with the Governments of Germany and Great Britain, to raise the blockade of the Venezuelan ports.

His Majesty's Government will be prepared to restore the vessels of the Venezuelan navy which may have been seized, and further to release any other vessel captured under the Venezuelan flag during the blockade.

ARTICLE 10

The treaty of amity, commerce, and navigation of June 19th, 1861, having been renewed and confirmed in accordance with the

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terms of Article VIII of this protocol, His Majesty's Government declare that they will be happy to reëstablish regular diplomatic relations with the Government of Venezuela.

WASHINGTON, D. C., *13th February, 1903*

(Signed)

E. MAYOR DES PLANCHES

(Signed)

HERBERT W. BOWEN

We interpret our three protocols to mean that the 30 per cent referred to therein of the total income of the custom-houses of La Guaira and Puerto Cabello shall be delivered to the representative of the Bank of England at Carácas, and that the said 30 per cent is not assigned to any one power but it is to be retained by the said representative of the Bank of England in Carácas and paid out by him in conformity with the decision rendered by the tribunal at The Hague.

WASHINGTON, *February 14th, 1903*

PROTOCOLS OF AGREEMENTS BETWEEN VENEZUELA AND GREAT BRITAIN, GERMANY, AND ITALY, TO WHICH THE UNITED STATES AND OTHER POWERS ARE PARTIES, RESPECTING THE REFERENCE OF THE QUESTION OF THE PREFERENTIAL TREATMENT OF CLAIMS TO THE TRIBUNAL AT THE HAGUE

VENEZUELA AND GREAT BRITAIN

Signed at Washington May 7, 1903

Whereas protocols have been signed between Venezuela on the one hand and Great Britain, Germany, Italy, United States of America, France, Spain, Belgium, the Netherlands, Sweden and Norway, and Mexico on the other hand, containing certain conditions agreed upon for the settlement of claims against the Venezuelan Government;

And whereas certain further questions arising out of the action taken by the Governments of Great Britain, Germany, and Italy, in connection with the settlement of their claims, have not proved to be susceptible of settlement by ordinary diplomatic methods;

And whereas the powers interested are resolved to determine these questions by reference to arbitration in accordance with the provisions of the convention for the pacific settlement of international disputes, signed at The Hague on the 29th July, 1899;

The Governments of Venezuela and Great Britain have, with a view to carry out that resolution, authorized their representatives — that is to say :

For Venezuela Mr. Herbert W. Bowen, duly authorized thereto by the Government of Venezuela, and for Great Britain His Excellency Sir Michael Henry Herbert, G.C.M.G., C.B., His Britannic Majesty's ambassador extraordinary and plenipotentiary to the United States of America, to conclude the following agreement :

ARTICLE I

The question as to whether or not Great Britain, Germany, and Italy are entitled to preferential or separate treatment in the payment of their claims against Venezuela shall be submitted for final decision to the tribunal at The Hague.

Venezuela having agreed to set aside 30 per cent of the customs revenues of La Guayra and Puerto Cabello for the payment of the claims of all nations against Venezuela, the tribunal at The Hague shall decide how the said revenues shall be divided between the blockading powers on the one hand and the other creditor powers on the other hand, and its decision shall be final.

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenues shall be distributed among all the creditor powers, and the parties hereto agree that the tribunal in that case shall consider, in connection with the payment of the claims out of the 30 per cent, any preference or pledges of revenue enjoyed by any of the creditor powers, and shall accordingly decide the question of distribution so that no power shall obtain preferential treatment, and its decision shall be final.

ARTICLE II

The facts on which shall depend the decision of the questions stated in Article I shall be ascertained in such manner as the tribunal may determine.

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ARTICLE III

The Emperor of Russia shall be invited to name and appoint from the members of the permanent court of The Hague three arbitrators to constitute the tribunal which is to determine and settle the questions submitted to it under and by virtue of this agreement. None of the arbitrators so appointed shall be a citizen or subject of any of the signatory or creditor powers.

This tribunal shall meet on the first day of September, 1903, and shall render its decision within six months thereafter.

ARTICLE IV

The proceedings shall be carried on in the English language, but arguments may, with permission of the tribunal, be made in any other language also.

Except as herein otherwise stipulated, the procedure shall be regulated by the convention of The Hague of July 29, 1899.

ARTICLE V

The tribunal shall, subject to the general provision laid down in article 57 of the international convention of July 29, 1899, also decide how, when, and by whom the costs of this arbitration shall be paid.

ARTICLE VI

Any nation having claims against Venezuela may join as a party in the arbitration provided for by this agreement.

Done at Washington this seventh day of May, 1903.

[SEAL]

HERBERT W. BOWEN

[SEAL]

MICHAEL H. HERBERT

The undersigned nations having claims against Venezuela hereby join with her as parties in the arbitration provided for in the foregoing protocol.

For the United States of America,

JOHN HAY

For the Republic of Mexico,

[SEAL]

M. DE AZPIROZ

For Sweden and Norway,

[SEAL] MAY 27, 1903.

A. GRIP

L'Ambassadeur de France, dûment autorisé et agissant au nom de son Gouvernement adhère au protocole ci-dessus, sous réserve qu'il est bien entendu que l'Article IV du dit protocole ne fera pas obstacle à l'application de la disposition de l'article 38 de l'acte de La Haye, aux termes de laquelle c'est le tribunal arbitral qui décide du choix des langues dont il fera usage et dont l'emploi sera autorisé devant lui.

1 Juin, 1903.

[SEAL]

JUSSERAND

Le Ministre de Belgique, dûment autorisé et agissant au nom de son Gouvernement adhère au protocole ci-dessus.

12 JUIN, 1903.

[SEAL]

BN MONCHEUR

Le Ministre des Pays-Bas, dûment autorisé et agissant au nom de son Gouvernement adhère au protocole ci-dessus.

WASHINGTON, le 13 Juin, 1903

[SEAL]

GEVERS

VENEZUELA AND GERMANY

Whereas protocols have been signed between Germany, Great Britain, Italy, the United States of America, France, Spain, Belgium, the Netherlands, Sweden and Norway, and Mexico on the one hand, and Venezuela on the other hand, containing certain conditions agreed upon for the settlement of claims against the Venezuelan Government;

And whereas certain further questions arising out of the action taken by the Governments of Germany, Great Britain, and Italy, in connection with the settlement of their claims, have not proved to be susceptible of settlement by ordinary diplomatic methods;

And whereas the powers interested are resolved to determine these questions by reference to arbitration in accordance with the provisions of the convention for the pacific settlement of international disputes, signed at The Hague on the 29th July, 1899;

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Venezuela and Germany have, with a view to carry out that resolution, authorized their representatives, that is to say :

Mr. Herbert W. Bowen as plenipotentiary of the Government of Venezuela and

The Imperial German minister, Baron Speck von Sternburg, as representative of the Imperial German Government to conclude the following agreement :

ARTICLE 1

The question as to whether or not Germany, Great Britain, and Italy are entitled to preferential or separate treatment in the payment of their claims against Venezuela shall be submitted for final decision to the tribunal at The Hague.

Venezuela having agreed to set aside 30 per cent of the customs revenues of La Guayra and Puerto Cabello for the payment of the claims of all nations against Venezuela, the tribunal at The Hague shall decide how the said revenues shall be divided between the blockading powers on the one hand and the other creditor powers on the other hand, and its decision shall be final.

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenues shall be distributed among all the creditor powers, and the parties hereto agree that the tribunal in that case shall consider in connection with the payment of the claims out of the 30 per cent any preference or pledges of revenue enjoyed by any of the creditor powers, and shall accordingly decide the question of distribution so that no power shall obtain preferential treatment, and its decision shall be final.

ARTICLE 2

The facts on which shall depend the decision of the questions stated in article 1 shall be ascertained in such manner as the tribunal may determine.

ARTICLE 3

The Emperor of Russia shall be invited to name and appoint from the members of the permanent court of The Hague three arbitrators to constitute the tribunal which is to determine and settle the questions submitted to it under and by virtue of this agreement. None

of the arbitrators so appointed shall be a subject or citizen of any of the signatory or creditor powers.

This tribunal shall meet on the first day of September, 1903, and shall render its decision within six months thereafter.

ARTICLE 4

The proceedings shall be carried on in the English language, but arguments may, with the permission of the tribunal, be made in any other language also. Except as herein otherwise stipulated, the procedure shall be regulated by the convention of The Hague of July 29th, 1899.

ARTICLE 5

The tribunal shall, subject to the general provision laid down in article 57 of the international convention of July 29, 1899, also decide how, when, and by whom the cost of this arbitration shall be paid.

ARTICLE 6

Any nation having claims against Venezuela may join as a party in the arbitration provided for by this agreement.

Done in duplicate at Washington this seventh day of May, one thousand and nine hundred and three.

[SEAL]

HERBERT W. BOWEN

[SEAL]

STERNBURG

The undersigned nations having claims against Venezuela hereby join with her as parties in the arbitration provided for in the foregoing protocol.

For the United States of America,

JOHN HAY

For the Republic of Mexico,

[SEAL]

M. DE AZPIROZ

For Sweden and Norway,

[SEAL] MAY 27, 1903.

A. GRIP

L'Ambassadeur de France, dûment autorisé et agissant au nom de son Gouvernement, adhère au Protocole ci-dessus, sous réserve qu'il

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est bien entendu que l'article IV du dit protocole ne fera pas obstacle à l'application de la disposition de l'article 38 de l'acte de La Haye, aux termes de laquelle c'est le tribunal arbitral qui décide du choix des langues dont il fera usage et dont l'emploi sera autorisé devant lui.

1^{er} JUIN 1903

[SEAL]

JUSSERAND

Le Ministre de Belgique, dûment autorisé et agissant au nom de son Gouvernement adhère au protocole ci-dessus.

12 Juin 1903

[SEAL]

BN. MONCHEUR

Le Ministre des Pays-Bas dûment autorisé et agissant au nom de son Gouvernement adhère au protocole ci-dessus.

WASHINGTON, le 13 Juin, 1903

[SEAL]

GEVERS

VENEZUELA AND ITALY

Whereas protocols have been signed between Venezuela, on the one hand, and Italy, Great Britain, Germany, United States of America, France, Spain, Belgium, The Netherlands, Sweden and Norway, and Mexico, on the other hand, containing certain conditions agreed upon for the settlement of claims against the Venezuelan Government;

And whereas certain further questions arising out of the action taken by the Governments of Italy, Germany, and Great Britain in connection with the settlement of their claims, have not proved to be susceptible of settlement by ordinary diplomatic methods;

And whereas the powers interested are resolved to determine these questions by reference to arbitration in accordance with the provision of the convention for the pacific settlement of international disputes signed at The Hague on the 29th July, 1899;

The Governments of Venezuela and Italy, with a view to carry out that resolution, authorized their representatives, that is to say:

For Venezuela, Mr. Herbert W. Bowen, duly authorized thereto by the Government of Venezuela;

For Italy, His Excellency Nobile Edmondo Mayor des Planches, His Majesty the King of Italy's ambassador extraordinary and plenipotentiary to the United States of America ;

to conclude the following agreement :

ARTICLE I

The question as to whether or not Italy, Germany, and Great Britain are entitled to preferential or separate treatment in the payment of their claims against Venezuela shall be submitted for final decision to the tribunal at The Hague.

Venezuela having agreed to set aside 30 per cent of the customs revenues of La Guayra and Puerto Cabello for the payment of the claims of all nations against Venezuela, the tribunal at The Hague shall decide how the said revenues shall be divided between the blockading powers on the one hand, and the other creditor powers on the other hand, and its decision shall be final.

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenues shall be distributed among all the creditor powers, and the parties hereto agree that the tribunal in that case shall consider, in connection with the payment of the claims out of 30 per cent, any preference or pledges of revenues enjoyed by any of the creditor powers, and shall accordingly decide the question of distribution so that no power shall obtain preferential treatment, and its decision shall be final.

ARTICLE II

The facts on which shall depend the decision of the questions stated in Article I shall be ascertained in such manner as the tribunal may determine.

ARTICLE III

The Emperor of Russia shall be invited to name and appoint from the members of the Permanent Court of The Hague three arbitrators to constitute the tribunal which is to determine and settle the questions submitted to it under and by virtue of this agreement.

None of the arbitrators so appointed shall be a citizen or a subject of any of the signatory or creditor powers.

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This tribunal shall meet on the first day of September, 1903, and shall render its decision within six months thereafter.

ARTICLE IV

The proceedings shall be carried on in the English language, but arguments may, with the permission of the tribunal, be made in any other language also.

Except as herein otherwise stipulated, the procedure shall be regulated by the convention of The Hague of July 29th, 1899.

ARTICLE V

The tribunal shall, subject to the general provision laid down in article 57 of the international convention of July 29th, 1899, also decide how, when, and by whom the costs of this arbitration shall be paid.

ARTICLE VI

Any nation having claims against Venezuela may join, as a party, in the arbitration provided for by this agreement.

WASHINGTON, D. C., *May 7, 1903*

HERBERT W. BOWEN [SEAL]

E. MAYOR DES PLANCHES [SEAL]

The undersigned nations having claims against Venezuela hereby join with her as parties in the arbitration provided for in the foregoing protocol.

For the United States of America,

JOHN HAY

For the Republic of Mexico,

[SEAL]

M. DE AZPIROZ

For Sweden and Norway,

[SEAL] MAY 27, 1903.

A. GRIP

L'Ambassadeur de France, dûment autorisé et agissant au nom de son Gouvernement, adhère au protocole ci-dessus, sous réserve qu'il est bien entendu que l'Article IV du dit protocole ne fera pas obstacle à l'application de la disposition de l'article 38 de l'acte de La Haye, aux termes de laquelle c'est le tribunal arbitral qui décide du choix

des langues dont il fera usage et dont l'emploi sera autorisé devant lui.

1^{er} JUIN, 1903.

[SEAL]

JUSSERAND

Le Ministre de Belgique, dûment autorisé et agissant au nom de son Gouvernement adhère au protocole ci-dessus.

12 JUIN, 1903.

[SEAL]

BN. MONCHEUR

Le Ministre des Pays-Bas, dûment autorisé et agissant au nom de son Gouvernement adhère au protocole ci-dessus.

WASHINGTON, *le 13 Juin, 1903.*

[SEAL]

GEVERS

PROTOCOL OF AN AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF VENEZUELA FOR SUBMISSION TO ARBITRATION OF ALL UNSETTLED CLAIMS AGAINST VENEZUELA

Signed at Washington, February 17, 1903

The United States of America and the Republic of Venezuela, through their representatives, John Hay, Secretary of State of the United States of America, and Herbert W. Bowen, the plenipotentiary of the Republic of Venezuela, have agreed upon and signed the following protocol.

ARTICLE I

All claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the commission hereinafter named by the Department of State of the United States or its legation at Caracas, shall be examined and decided by a mixed commission, which shall sit at Caracas, and which shall consist of two members, one of whom is to be appointed by the President of the United States and the other by the President of Venezuela.

It is agreed that an umpire may be named by the Queen of the Netherlands. If either of said commissioners or the umpire should fail or cease to act, his successor shall be appointed forthwith in

the same manner as his predecessor. Said commissioners and umpire are to be appointed before the first day of May, 1903.

The commissioners and the umpire shall meet in the city of Caracas on the first day of June, 1903. The umpire shall preside over their deliberations, and shall be competent to decide any question on which the commissioners disagree. Before assuming the functions of their office the commissioners and the umpire shall take solemn oath carefully to examine and impartially decide, according to justice and the provisions of this convention, all claims submitted to them, and such oaths shall be entered on the record of their proceedings. The commissioners, or, in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature or of the provisions of local legislation.

The decisions of the commission, and in the event of their disagreement, those of the umpire, shall be final and conclusive. They shall be in writing. All awards shall be made payable in United States gold, or its equivalent in silver.

ARTICLE II

The commissioners, or umpire, as the case may be, shall investigate and decide said claims upon such evidence or information only as shall be furnished by or on behalf of the respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective Governments in support of or in answer to any claim, and to hear oral or written arguments made by the agent of each Government on every claim. In case of their failure to agree in opinion upon any individual claim the umpire shall decide.

Every claim shall be formally presented to the commissioners within thirty days from the day of their first meeting, unless the commissioners or the umpire in any case extend the period for presenting the claim not exceeding three months longer. The commissioners shall be bound to examine and decide upon every claim within six months from the day of its first formal presentation, and in case of their disagreement, the umpire shall examine and decide within a corresponding period from the date of such disagreement.

ARTICLE III

The commissioners and the umpire shall keep an accurate record of their proceedings. For that purpose, each commissioner shall appoint a secretary versed in the language of both countries, to assist them in the transaction of the business of the commission. Except as herein stipulated, all questions of procedure shall be left to the determination of the commission, or in case of their disagreement, to the umpire.

ARTICLE IV

Reasonable compensation to the commissioners and to the umpire for their services and expenses, and the other expenses of said arbitration, are to be paid in equal moieties by the contracting parties.

ARTICLE V

In order to pay the total amount of the claims to be adjudicated as aforesaid and other claims of citizens or subjects of other nations the Government of Venezuela shall set apart for this purpose, and alienate to no other purpose, beginning with the month of March, 1903, thirty per cent in monthly payments of the customs revenues of La Guayra and Puerto Cabello, and the payments thus set aside shall be divided and distributed in conformity with the decision of The Hague Tribunal.

In case of the failure to carry out the above agreement Belgian officials shall be placed in charge of the customs of the two ports and shall administer them until the liabilities of the Venezuelan Government in respect to the above claims shall have been discharged. The reference of the question above stated to The Hague Tribunal will be the subject of a separate protocol.

ARTICLE VI

All existing and unsatisfied awards in favor of citizens of the United States shall be promptly paid, according to the terms of the respective awards.

WASHINGTON, D. C., FEBRUARY 17, 1903

JOHN HAY [SEAL]
HERBERT W. BOWEN [SEAL]

AWARD OF THE TRIBUNAL OF ARBITRATION

February 22, 1904

The Tribunal of Arbitration, constituted in virtue of the protocols signed at Washington on May 7, 1903, between Germany, Great Britain, and Italy on the one hand and Venezuela on the other hand ;

Whereas other protocols were signed to the same effect by Belgium, France, Mexico, the Netherlands, Spain, Sweden and Norway, and the United States of America on the one hand and Venezuela on the other hand ;

Whereas all these protocols declare the agreement of all the contracting parties with reference to the settlement of the claims against the Venezuelan Government ;

Whereas certain further questions, arising out of the action of the Governments of Germany, Great Britain, and Italy concerning the settlement of their claims, were not susceptible of solution by the ordinary diplomatic methods ;

Whereas the powers interested decided to solve these questions by submitting them to arbitration, in conformity with the dispositions of the convention, signed at The Hague on July 29, 1899, for the pacific settlement of international disputes ;

Whereas in virtue of Article III of the protocols of Washington of May 7, 1903, His Majesty the Emperor of Russia was requested by all the interested powers to name and appoint from among the members of the Permanent Court of Arbitration of The Hague three arbitrators, who shall form the Tribunal of Arbitration charged with the solution and settlement of the questions which shall be submitted to it in virtue of the above-named protocols ;

Whereas none of the arbitrators thus named could be a citizen or subject of any one of the signatory or creditor powers, and whereas the tribunal was to meet at The Hague on September 1, 1903, and render its award within a term of six months ;

His Majesty the Emperor of Russia, conforming to the request of all the signatory powers of the above-named protocols of Washington of May 7, 1903, graciously named as arbitrators the following members of the Permanent Court of Arbitration :

His Excellency Mr. N. V. Mourawieff, secretary of state of His Majesty the Emperor of Russia, actual privy councillor, minister of justice and procurator-general of the Russian Empire.

Mr. H. Lammasch, professor of criminal and of international law at the University of Vienna, member of the Upper House of the Austrian Parliament, and

His Excellency Mr. F. de Martens, doctor of law, privy councillor, permanent member of the council of the Russian ministry of foreign affairs, member of the "Institut de France;"

Whereas by unforeseen circumstances the Tribunal of Arbitration could not be definitely constituted till October 1, 1903, the arbitrators, at their first meeting on that day, proceeding in conformity with Article XXXIV of the convention of July 29, 1899, to the nomination of the president of the tribunal, elected as such His Excellency Mr. Mourawieff, minister of justice;

And whereas in virtue of the protocols of Washington of May 7, 1903, the above-named arbitrators, forming the legally constituted Tribunal of Arbitration, had to decide in conformity with Article I of the protocols of Washington of May 7, 1903, the following points:

The question as to whether or not Germany, Great Britain, and Italy are entitled to preferential or separate treatment in the payment of their claims against Venezuela, and its decision shall be final.

Venezuela having agreed to set aside 30 per cent of the customs revenues of La Guayra and Puerto Cabello for the payment of the claims of all nations against Venezuela, the tribunal at The Hague shall decide how the said revenues shall be divided between the blockading powers on the one hand and the other creditor powers on the other hand, and its decision shall be final.

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenue shall be distributed among all the creditor powers, and the parties hereto agree that the tribunal, in that case, shall consider, in connection with the payment of the claims out of the 30 per cent, any preference or pledges of revenues enjoyed by any of the creditor powers, and shall accordingly decide the question of distribution, so that no power shall obtain preferential treatment, and its decision shall be final.

Whereas the above-named arbitrators, having examined with impartiality and care all the documents and acts presented to the Tribunal of Arbitration by the agents of the powers interested in this

litigation, and having listened with the greatest attention to the oral pleadings delivered before the tribunal by the agents and counsel of the parties to the litigation ;

Whereas the tribunal, in its examination of the present litigation, had to be guided by the principles of international law and the maxims of justice ;

Whereas the various protocols signed at Washington since February 13, 1903, and particularly the protocols of May 7, 1903, the obligatory force of which is beyond all doubt, form the legal basis for the arbitral award ;

Whereas the tribunal has no competence at all either to contest the jurisdiction of the mixed commissions of arbitration established at Caracas nor to judge their action.

Whereas the tribunal considers itself absolutely incompetent to give a decision as to the character or the nature of the military operations undertaken by Germany, Great Britain, and Italy against Venezuela ;

Whereas also the Tribunal of Arbitration was not called upon to decide whether the three blockading powers had exhausted all pacific methods in their dispute with Venezuela in order to prevent the employment of force ;

And it can only state the fact that since 1901 the Government of Venezuela categorically refused to submit its dispute with Germany and Great Britain to arbitration, which was proposed several times and especially by the note of the German Government of July 16, 1901 ;

Whereas after the war between Germany, Great Britain, and Italy on the one hand and Venezuela on the other hand no formal treaty of peace was concluded between the belligerent powers ;

Whereas the protocols, signed at Washington on February 13, 1903, had not settled all the questions in dispute between the belligerent parties, leaving open in particular the question of the distribution of the receipts of the customs of La Guayra and Puerto Cabello ;

Whereas the belligerent powers in submitting the question of preferential treatment in the matter of these receipts to the judgment of the tribunal of arbitration agreed that the arbitral award should

serve to fill up this void and to insure the definite reestablishment of peace between them ;

Whereas, on the one hand, the warlike operations of the three great European powers against Venezuela ceased before they had received satisfaction on all their claims, and, on the other hand, the question of preferential treatment was submitted to arbitration, the tribunal must recognize in these facts precious evidence in favor of the great principle of arbitration in all phases of international disputes ;

Whereas the blockading powers, in admitting the adhesion to the stipulations of the protocols of February 13, 1903, of the other powers which had claims against Venezuela, could evidently not have the intention of renouncing either their acquired rights or their actual privileged position ;

Whereas the Government of Venezuela in the protocols of February 13, 1903 (Article I), itself recognizes "in principle the justice of the claims" presented to it by the Governments of Germany, Great Britain, and Italy ;

While in the protocol signed between Venezuela and the so-called neutral or pacific powers the justice of the claims of these latter was not recognized in principle ;

Whereas the Government of Venezuela until the end of January, 1903, in no way protested against the pretensions of the blockading powers to insist on special securities for the settlement of their claims ;

Whereas Venezuela itself during the diplomatic negotiations always made a formal distinction between "the allied powers" and "the neutral or pacific powers ;"

Whereas the neutral powers, who now claim before the Tribunal of Arbitration equality in the distribution of the 30 per cent of the customs receipts of La Guayra and Puerto Cabello, did not protest against the pretensions of the blockading powers to a preferential treatment either at the moment of the cessation of the war against Venezuela or immediately after the signature of the protocols of February 13, 1903 ;

Whereas it appears from the negotiations which resulted in the signature of the protocols of February 13 and May 7, 1903, that the

German and British Governments constantly insisted on their being given guarantees for "a sufficient and punctual discharge of the obligations" (British memorandum of December 23, 1902, communicated to the Government of the United States of America);

Whereas the plenipotentiary of the Government of Venezuela accepted this reservation on the part of the allied powers without the least protest;

Whereas the Government of Venezuela engaged, with respect to the allied powers alone, to offer special guarantees for the accomplishment of its engagements;

Whereas the good faith which ought to govern international relations imposes the duty of stating that the words "all claims" used by the representative of the Government of Venezuela in his conferences with the representatives of the allied powers (statement left in the hands of Sir Michael Herbert by Mr. H. Bowen of January 23, 1903) could only mean the claims of these latter and could only refer to them;

Whereas the neutral powers, having taken no part in the war-like operations against Venezuela, could in some respects profit by the circumstances created by those operations, but without acquiring any new rights;

Whereas the rights acquired by the neutral or pacific powers with regard to Venezuela remain in the future absolutely intact and guaranteed by respective international arrangements;

Whereas in virtue of Article V of the protocols of May 7, 1903, signed at Washington, the tribunal "shall also decide, subject to the general provisions laid down in Article LVII of the international convention of July 29, 1899, how, when, and by whom the costs of this arbitration shall be paid;"

For these reasons, the Tribunal of Arbitration decides and pronounces unanimously that:

(1) Germany, Great Britain, and Italy have a right to preferential treatment for the payment of their claims against Venezuela;

(2) Venezuela having consented to put aside 30 per cent of the revenues of the customs of La Guaira and Puerto Cabello for the payment of the claims of all nations against Venezuela, the three above-named powers have a right to preference in the payment of

their claims by means of these 30 per cent of the receipts of the two Venezuelan ports above mentioned ;

(3) Each party to the litigation shall bear its own costs and an equal share of the costs of the tribunal.

The Government of the United States of America is charged with seeing to the execution of this latter clause within a term of three months.¹

Done at The Hague, in the Permanent Court of Arbitration,
February 22, 1904.

(Signed)

N. MOURAWIEFF

(Signed)

H. LAMMASCH

(Signed)

MARTENS

¹ In a note of instruction to the American Minister at The Hague, March 9, 1904, Secretary Hay declined to assume this duty, saying, "The action of the United States in respect to the payment of the costs must, therefore, be limited to the payment of its own costs and its share of the costs of the tribunal."

III

GERMANY, FRANCE AND GREAT BRITAIN, AND JAPAN

JAPANESE HOUSE TAX

COMPROMIS, AUGUST 28, 1902

SESSIONS, NOVEMBER 21, 1904-MAY 15, 1905, THE HAGUE

AWARD, MAY 22, 1905

ARBITRATORS, GRAM, RENAULT, MOTONO

PROTOCOL BETWEEN GREAT BRITAIN AND JAPAN¹

Whereas, a dispute has arisen between the Government of Japan on the one side and the Governments of Great Britain, France and Germany on the other, respecting the true intent and meaning of the following provisions of the Treaties and other engagements respectively existing between them, that is to say :

Paragraph 4, Article XVIII, of the Treaty of Commerce and Navigation of April 4, 1896, between Japan and Germany : "Sobald diese Einverleibung erfolgt," [that is to say : when the several foreign Settlements in Japan shall have been incorporated with the respective Japanese Communes], "sollen die bestehenden, zeitlich unbegrenzten Ueberlassungsverträge, unter welchen jetzt in den gedachten Niederlassungen Grundstücke besessen werden, bestätigt und hinsichtlich dieser Grundstücke sollen keine Bedingungen irgend einer anderen Art auferlegt werden, als sie in den bestehenden Ueberlassungsverträgen enthalten sind"; and § 3 of the complementary communication of the same date from the German Secretary for Foreign Affairs to the Japanese Minister at Berlin : "3, dass, da das Eigenthum an den im Artikel XVIII des Vertrages

¹ Similar protocols were signed by Japan with Germany and with France.

erwähnten Niederlassungsgrundstücken dem Japanischen Staate verbleibt, die Besitzer oder deren Rechtsnachfolger für ihre Grundstücke ausser dem kontraktmässigen Grundzins Abgaben oder Steuern irgend welcher Art nicht zu entrichten haben werden"; and the clause in the reply of the Japanese Minister of the same date, to the foregoing communication: "dass die darin unter Nummer 1 bis 4 zum Ausdruck gebrachten Voraussetzungen, welche den Erwerb dinglicher Rechte an Grundstücken, die Errichtung von Waarenhäusern, die Steuerfreiheit der Grundstücke, die in den Fremdenniederlassungen und die Erhaltung wohlervorbener Rechte nach Ablauf des Vertrages zum Gegenstande haben, in allen Punkten zutreffend sind";

Paragraph 4, Article XXI, of the revised Treaty of August 4, 1896, between Japan and France: "Lorsque les changements ci-dessus indiqués auront été effectués," [that is to say: when the several foreign Settlements in Japan shall have been incorporated with the respective Japanese Communes and made a part of the municipal system of Japan; and when the competent Japanese Authorities shall have assumed all municipal obligations and duties, and the municipal funds and property belonging to such Settlements shall have been transferred to said Japanese Authorities], "les baux à perpétuité en vertu desquels les étrangers possèdent actuellement des propriétés dans les quartiers seront confirmés, et les propriétés de cette nature ne donneront lieu à aucuns impôts, taxes, charges, contributions ou conditions quelconques autres que ceux expressément stipulés dans les baux en question"; and

Paragraph 4, Article XVIII, of the revised Treaty of July 16, 1894, between Japan and Great Britain: "When such incorporation takes place," [that is to say: when the several foreign Settlements in Japan shall have been incorporated with the respective Japanese Communes], "existing leases in perpetuity under which property is now held in the said Settlements shall be confirmed, and no conditions whatsoever other than those contained in such existing leases shall be imposed in respect of such property"; and

Whereas, the controversy is not amenable to ordinary diplomatic methods; and

Whereas, the Powers at variance, co-Signatories of the Convention

of The Hague for the peaceful adjustment of international differences, have resolved to terminate the controversy by referring the question at issue to impartial arbitration in accordance with the provisions of said Convention ;

The said Powers have, with a view to carry out that resolution, authorized the following Representatives, that is to say :

The Government of Great Britain : Sir Claude Maxwell MacDonald, G.C.M.G., K.C.B., His Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary ;

The Government of France : Monsieur G. Dubail, Minister Plenipotentiary, Chargé d'Affaires of France ;

The Government of Germany : Count von Arco Valley, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the German Emperor, King of Prussia ;

The Government of Japan : Baron Komura Jutarō, His Imperial Japanese Majesty's Minister of State for Foreign Affairs ;

to conclude the following Protocol :

I. The Powers in difference agree that the Arbitral Tribunal, to which the question at issue is to be submitted for final decision, shall be composed of three members who are Members of the Permanent Court of Arbitration of The Hague, to be selected in the following manner :

Each Party, as soon as possible, and not later than two months after the date of this Protocol, to name one Arbitrator, and the two Arbitrators so named together to choose an Umpire. In case the two Arbitrators fail for the period of two months after their appointment to choose an Umpire, His Majesty the King of Sweden and Norway shall be requested to name an Umpire.

II. The question at issue upon which the Parties to this Arbitration request the Arbitral Tribunal to pronounce a final decision, is as follows :

Whether or not the provisions of the Treaties and other engagements above quoted exempt only land held under

leases in perpetuity granted by or on behalf of the Japanese Government, or land and buildings of whatever description constructed or which may hereafter be constructed on such land, from any imposts, taxes, charges, contributions or conditions whatsoever, other than those expressly stipulated in the leases in question.

III. Within eight months after the date of this Protocol, each Party shall deliver to the several Members of the Arbitral Tribunal and to the other Party, complete written or printed copies of the Case, evidence and arguments upon which it relies in the present Arbitration. And not later than six months thereafter a similar delivery shall be made of written or printed copies of the Counter-Cases, additional evidence, and final arguments of the two Parties; it being understood that such Counter-Cases, additional evidence, and final arguments shall be limited to answering the principal Cases, evidence, and arguments previously delivered.

IV. Each Party shall have the right to submit to the Arbitral Tribunal as evidence in the Case all such documents, records, official correspondences, and other official or public statements or acts bearing on the subject of this Arbitration as it may consider necessary. But if in its Case, Counter-Case, or arguments submitted to the Tribunal either Party shall have specified or alluded to any document or paper in its own exclusive possession without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof within thirty days after such application is made.

V. Either Party may, if it thinks fit, but subject to the right of reply on the part of the other Party within such time as may be fixed by the Arbitral Tribunal, present to the Tribunal for such action as the Tribunal may deem proper, a statement of objections to the Counter-Case, additional evidence, and final arguments of the other Party if it is of opinion that those documents or any of them are irrelevant, erroneous, or not strictly limited to answering its principal Case, evidence, and arguments.

VI. No papers or communications other than those contemplated by Sections III and V of this Protocol, either written or oral, shall be admitted or considered in the present Arbitration unless the Arbitral Tribunal shall request from either Party additional or supplementary explanation or information to be given in writing. If the explanation or information is given, the other Party shall have the right to present a written reply within such time as may be fixed by the Arbitral Tribunal.

VII. The Tribunal shall meet at a place to be designated later by the Parties as soon as practicable, but not earlier than two months nor later than three months after the delivery of the Counter-Cases as provided in Section III of this Protocol, and shall proceed impartially and carefully to examine and decide the question at issue. The decision of the Tribunal shall, if possible, be pronounced within one month after the President thereof shall have declared the arbitral hearing closed.

VIII. For the purposes of this Arbitration, the Government of Japan shall be regarded as one Party, and the Governments of Great Britain, France, and Germany, jointly, shall be regarded as the other Party.

IX. So far as is not otherwise provided in this Protocol, the provisions of the Convention of The Hague for the peaceful adjustment of international differences shall apply to this Arbitration.

Done at Tôkiô, this 28th day of August 1902, corresponding to the 28th day of the 8th month of the 35th year of Meiji.

(Signed) CLAUDE M. MACDONALD
JUTARO KOMURA

SENTENCE DU TRIBUNAL D'ARBITRAGE. CONSTITUÉ EN VERTU
DES PROTOCOLES SIGNÉS À TOKYO LE 28 AOÛT 1902 ENTRE LE
JAPON D'UNE PART ET L'ALLEMAGNE, LA FRANCE ET LA GRANDE
BRETAGNE D'AUTRE PART

Attendu qu'aux termes de Protocoles, signés à Tokyo le 28 août 1902, un désaccord s'est produit, entre le Gouvernement du Japon d'une part et les Gouvernements d'Allemagne, de France et de Grande Bretagne d'autre part, touchant le sens réel et la portée des dispositions suivantes des traités respectifs et autres engagements existant entre eux, c'est-à-dire :

Paragraphe 4 de l'Article XVIII du Traité de Commerce et de Navigation du 4 avril 1896 entre le Japon et l'Allemagne : „Sobald diese Einverleibung erfolgt" [c'est-à-dire : quand les divers quartiers étrangers qui existent au Japon auront été incorporés dans les communes respectives du Japon] „sollen die bestehenden, zeitlich unbegrenzten Ueberlassungsverträge, unter welchen jetzt in den gedachten Niederlassungen Grundstücke besessen werden, bestätigt und hinsichtlich dieser Grundstücke sollen keine Bedingungen irgend einer anderen Art auferlegt werden, als sie in den bestehenden Ueberlassungsverträgen enthalten sind"; — et § 3 de la communication complémentaire de même date du Secrétaire d'Etat des Affaires Etrangères de l'Empire d'Allemagne au Ministre du Japon à Berlin : „3. dass, da das Eigenthum an den im Artikel XVIII des Vertrages erwähnten Niederlassungsgrundstücken dem

AWARD OF THE TRIBUNAL OF ARBITRATION CONSTITUTED IN ACCORDANCE WITH THE PROTOCOLS SIGNED AT TÔKIÔ ON THE 28TH AUGUST, 1902, BY JAPAN OF THE ONE PART, AND GERMANY, FRANCE, AND GREAT BRITAIN OF THE OTHER PART¹

Whereas, in the terms of the Protocols signed at Tôkiô on the 28th August, 1902, a dispute has arisen between the Government of Japan on the one side, and the Governments of Germany, France, and Great Britain on the other side, respecting the true intent and meaning of the following provisions of the Treaties and other engagements respectively existing between them, that is to say:—

Paragraph 4 of Article XVIII of the Treaty of Commerce and Navigation of the 4th April, 1896, between Japan and Germany:² “Sobald diese Einverleibung erfolgt” (that is to say, when the several foreign Settlements in Japan shall have been incorporated with the respective Japanese communes), “sollen die bestehenden, zeitlich unbegrenzten Ueberlassungsverträge, unter welchen jetzt in den gedachten Niederlassungen Grundstücke besessen werden, bestätigt und hinsichtlich dieser Grundstücke sollen keine Bedingungen irgend einer anderen Art auferlegt werden, als sie in den bestehenden Ueberlassungsverträgen enthalten sind”; and section 3 of the complementary communication of the same date from the Imperial German Secretary of State for Foreign Affairs to the Japanese Minister at Berlin: “3. Dass, da das Eigenthum an den im Artikel XVIII des Vertrages erwähnten Niederlassungsgrund-

¹ From British Parliamentary Papers, Japan No. 1, [1905], [Cd. 2583].

² *Translation.* — Paragraph 4 of Article XVIII of the Treaty of Commerce and Navigation of the 4th April, 1896, between Japan and Germany: “When such incorporation takes place” (that is to say, when the several foreign Settlements in Japan shall have been incorporated with the respective Japanese communes), “existing leases in perpetuity under which real property is now held in the said Settlements shall be confirmed, and no conditions of any kind other than those contained in the existing leases shall be imposed in respect of such property”; and section 3 of the complementary communication of the same date from the Imperial German Secretary of State for Foreign Affairs to the Japanese Minister at Berlin: “3. That, as the ownership of the Settlement properties mentioned in Article XVIII of the Treaty remains vested in the Japanese State, the holders or their legal successors will have no dues or taxes of any kind to pay in respect of their property, besides the ground rent fixed by contract”; and the clause in the reply of the Japanese Minister of the same date to the foregoing communication: “that the assumptions expressed therein under Nos. 1 to 4, respecting the acquisition of real rights to property, the erection of warehouses, the exemption of real property in the foreign Settlements from taxation, and the maintenance of properly acquired rights after the expiration of the Treaty are correct in all points.”

Japanischen Staate verbleibt, die Besitzer oder deren Rechtsnachfolger für ihre Grundstücke ausser dem kontraktmässigen Grundzins Abgaben oder Steuern irgend welcher Art nicht zu entrichten haben werden," et l'alinéa suivant de la réponse du Ministre du Japon de même date à la précédente communication : „dass die darin unter Nummer 1 bis 4 zum Ausdruck gebrachten Voraussetzungen, welche den Erwerb dinglicher Rechte an Grundstücken, die Errichtung von Waarenhäusern, die Steuerfreiheit der Grundstücke in den Fremdenniederlassungen und die Erhaltung wohlervorbener Rechte nach Ablauf des Vertrages zum Gegenstande haben, in allen Punkten zutreffend sind";

Paragraphe 4 de l'Article XXI du Traité révisé du 4 août 1896 entre le Japon et la France : „Lorsque les changements ci-dessus indiqués auront été effectués," [c'est-à-dire : lorsque les divers quartiers étrangers qui existent au Japon auront été incorporés aux communes respectives du Japon et feront dès lors partie du système municipal du Japon ; et lorsque les autorités japonaises compétentes auront assumé toutes les obligations et tous les devoirs municipaux, et que les fonds et biens municipaux qui pourraient appartenir à ces quartiers auront été transférés aux dites autorités] „les baux à perpétuité en vertu desquels les étrangers possèdent actuellement des propriétés dans les quartiers seront confirmés, et les propriétés de cette nature ne donneront lieu à aucuns impôts, taxes, charges, contributions ou conditions quelconques autres que ceux expressément stipulés dans les baux en question";

Paragraphe 4 de l'Article XVIII du Traité révisé du 16 juillet 1894 entre le Japon et la Grande Bretagne : „When such incorporation

stücken dem Japanischen Staate verbleibt, die Besitzer oder deren Rechtsnachfolger für ihre Grundstücke ausser dem kontraktmässigen Grundzins Abgaben oder Steuern irgend welcher Art nicht zu entrichten haben werden"; and the following paragraph in the reply of the Japanese Minister of the same date to the foregoing communication: "dass die darin unter Nummer 1 bis 4 zum Ausdruck gebrachten Voraussetzungen, welche den Erwerb dinglicher Rechte an Grundstücken, die Errichtung von Waarenhäusern, die Steuerfreiheit der Grundstücke in den Fremdenniederlassungen und die Erhaltung wohlervorbener Rechte nach Ablauf des Vertrages zum Gegenstande haben, in allen Punkten zutreffend sind";

Paragraph 4 of Article XXI of the revised Treaty of the 4th August, 1896, between Japan and France: ¹ "Lorsque les changements ci-dessus indiqués auront été effectués" (c'est-à-dire: lorsque les divers quartiers étrangers qui existent au Japon auront été incorporés aux communes respectives du Japon et feront dès lors partie du système municipal du Japon; et lorsque les autorités Japonaises compétentes auront assumé toutes les obligations et tous les devoirs municipaux, et que les fonds et biens municipaux qui pourraient appartenir à ces quartiers auront été transférés aux dites autorités), "les baux à perpétuité en vertu desquels les étrangers possèdent actuellement des propriétés dans les quartiers seront confirmés, et les propriétés de cette nature ne donneront lieu à aucuns impôts, taxes, charges, contributions ou conditions quelconques autres que ceux expressément stipulés dans les baux en question";

Paragraph 4 of Article XVIII of the revised Treaty of the 16th July, 1894, between Japan and Great Britain: "When such incorporation

¹ *Translation.* — Paragraph 4 of Article XXI of the revised Treaty of the 4th August, 1896, between Japan and France: "When the changes indicated above shall have been effected" (that is to say, when the several foreign Settlements in Japan shall have been incorporated with the respective Japanese communes, and made a part of the municipal system of Japan, and when the competent Japanese authorities shall have assumed all municipal obligations and duties, and the municipal funds and property belonging to such Settlements shall have been transferred to the said Japanese authorities), "the leases in perpetuity, in virtue of which foreigners now hold property in the Settlements shall be confirmed, and property of this nature shall not give rise to any imposts, taxes, charges, contributions, or any conditions whatsoever other than those expressly stipulated in the leases in question."

takes place," [c'est-à-dire : quand les divers quartiers étrangers qui existent au Japon auront été incorporés aux communes respectives du Japon] „existing leases in perpetuity under which property is now held in the said settlements shall be confirmed, and no conditions whatsoever other than those contained in such existing leases shall be imposed in respect of such property” ;

Attendu que les Puissances en litige sont tombées d'accord pour soumettre leur différend à la décision d'un Tribunal d'Arbitrage, qu'en vertu des Protocoles susmentionnés,

les Gouvernements d'Allemagne, de France et de Grande Bretagne ont désigné pour Arbitre Monsieur Louis Renault, Ministre Plénipotentiaire, Membre de l'Institut de France, Professeur à la Faculté de droit de Paris, Jurisconsulte du Département des Affaires Etrangères, et

le Gouvernement du Japon a désigné pour Arbitre Son Excellence Monsieur Itchiro Motono, Envoyé Extraordinaire et Ministre Plénipotentiaire de Sa Majesté l'Empereur du Japon à Paris, Docteur en droit,

que les deux Arbitres sus-nommés ont choisi pour Surarbitre Monsieur Gregers Gram, ancien Ministre d'Etat de Norvège, Gouverneur de Province ;

Attendu que le Tribunal ainsi composé a pour mission de statuer, en dernier ressort, sur la question suivante :

Oui ou non, les dispositions des traités et autres engagements ci-dessus mentionnés exemptent-elles seulement les terrains possédés en vertu des baux perpétuels concédés par le Gouvernement Japonais ou en son nom, —ou bien exemptent-elles les terrains et les bâtiments de toute nature construits ou qui pourraient être construits sur ces terrains, — de tous impôts, taxes, charges, contributions ou conditions quelconques autres que ceux expressément stipulés dans les baux en question ?

Attendu que le Gouvernement Japonais soutient que les terrains seuls sont, dans la mesure qui vient d'être indiquée, exemptés du paiement d'impôts et autres charges,

que les Gouvernements d'Allemagne, de France et de Grande

takes place" (that is to say, when the several foreign Settlements in Japan shall have been incorporated with the respective Japanese communes) "existing leases in perpetuity under which property is now held in the said Settlements shall be confirmed, and no conditions whatsoever, other than those contained in such existing leases, shall be imposed in respect of such property."

Whereas, the Powers at variance have agreed to submit their difference to the decision of a Tribunal of Arbitration,

and, in accordance with the Protocols mentioned above,

the Governments of Germany, France and Great Britain have named as Arbitrator Mr. Louis Renault, Minister Plenipotentiary, Member of the Institute of France, Professor of Law in the University of Paris, Legal Adviser to the Department of Foreign Affairs, and

the Government of Japan have named as Arbitrator his Excellency Mr. Itchiro Motono, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the Emperor of Japan at Paris, Doctor of Law.

Whereas, the two Arbitrators above mentioned have chosen as Umpire Mr. Gregers Gram, formerly Norwegian Minister of State, Governor of a province;

Whereas, the task of the Tribunal thus composed is to pronounce a final decision on the following question : —

"Whether or not the provisions of the Treaties and other engagements above quoted exempt only land held under leases in perpetuity granted by or on behalf of the Japanese Government, or land and buildings of whatever description, constructed or which may hereafter be constructed on such land, from any imposts, taxes, charges, contributions, or conditions whatsoever, other than those expressly stipulated in the leases in question?"

Whereas, the Government of Japan maintain that the land only, to the extent above indicated, is exempt from the payment of imposts and other charges;

And the Governments of Germany, France, and Great Britain

Bretagne prétendent, au contraire, que les bâtiments, construits sur ces terrains, jouissent de la même exemption,

Attendu que, pour se rendre compte de la nature et de l'étendue des engagements contractés de part et d'autre par les baux à perpétuité, il faut recourir à divers arrangements et conventions intervenus, sous le régime des anciens traités, entre les autorités japonaises et les représentants de plusieurs Puissances,

Attendu que de ces actes et des stipulations insérées dans les baux il résulte :

que le Gouvernement Japonais avait consenti à prêter son concours à la création de quartiers étrangers dans certaines villes et ports du Japon, ouverts aux ressortissants d'autres nations,

que, sur les terrains désignés à l'usage des étrangers dans les différentes localités, le Gouvernement Japonais a exécuté, à ses frais, des travaux en vue de faciliter l'occupation urbaine,

que les étrangers n'étant pas, d'après les principes du droit japonais, admis à acquérir la propriété de terrains situés dans le pays, le Gouvernement leur a donné les terrains en location à perpétuité,

que les baux déterminent l'étendue des lots de terre loués et stipulent une rente annuelle fixe, calculée à raison de l'espace loué,

qu'il fut convenu qu'en principe les quartiers étrangers resteraient en dehors du système municipal du Japon, mais qu'au reste, ils n'étaient pas soumis à une organisation uniforme,

qu'il était arrêté, par voie de règlements, comment il serait pourvu aux diverses fonctions de l'administration et qu'il était prescrit que les détenteurs des terrains seraient tenus de subvenir partiellement aux frais de la municipalité à l'aide de redevances dont le montant et le mode de perception étaient déterminés,

Attendu qu'on s'expliquerait bien le soin apporté dans la rédaction des dits actes en vue de préciser les obligations de toute nature incombant aux étrangers vis à vis du Gouvernement Japonais, s'il était entendu que la rente annuelle représentât, non seulement le

contend, on the contrary, that buildings constructed on such land enjoy the same exemption ;

Whereas, in order to estimate the nature and extent of the engagements entered into on both sides by the leases in perpetuity, it is necessary to refer to various arrangements and Conventions arrived at between the Japanese authorities and the Representatives of various Powers, when the old Treaties were in force ;

Whereas, from these instruments and from the stipulations inserted in the leases it appears :

That the Japanese Government had consented to coöperate in the creation of foreign settlements in certain towns and ports of Japan open to the dependents of other nations ;

That the Japanese Government have, at their own expense, with a view of encouraging the establishment of towns thereon,¹ carried out works on the land appointed for the use of foreigners in different localities.

That foreigners not being permitted, according to the principles of Japanese law, to acquire ownership of land situated in that country, the Government have leased land to them in perpetuity ;

That the leases determine the extent of the plots of land leased and lay down a fixed annual payment, calculated in proportion to the area leased ;

That it was agreed that in principle the foreign settlements should remain outside the municipal system of Japan, but that nevertheless they were not subject to uniform organization ;

That it was decided by means of regulations how provision should be made for the various functions of Administration, and that it was laid down that the holders of land should be bound to contribute in part towards the expenses of the municipality by means of dues, the amount and mode of collection of which were determined ;

Whereas, it would be easy to account for the care taken in drawing up the said instruments with a view of defining the obligations of every kind incumbent upon foreigners towards the Japanese Government, if it was understood that the annual payment represented,

¹ This is understood to be the meaning attached by the Arbitrators to the words "occupation urbaine."

prix de la location, mais aussi la contrepartie des impôts dont les preneurs eussent été redevables à raison de la situation créée à leur profit par les baux et que, par conséquent, ils n'auraient, en cette qualité, à supporter que les impôts et charges qui étaient expressément mentionnés dans les dits baux,

Attendu qu'au reste, il n'est pas contesté que ce ne soit là le véritable sens de ces actes, en tant qu'il s'agit des terrains, mais que le Gouvernement Japonais allègue que les baux n'avaient pour objet que les terrains nus et qu'il n'admet pas que les constructions, élevées sur les terrains, fussent comprises dans les stipulations sur lesquelles l'exemption des impôts serait fondée,

qu'il a allégué que les terrains seuls appartenaient au Gouvernement, les constructions étant, au contraire, la propriété des preneurs, et qu'en conséquence l'immunité dont il est question ne pouvait s'étendre qu'aux immeubles qui n'étaient pas sortis du patrimoine de l'Etat,

Attendu que, toutefois, la question qu'il s'agit de décider est celle de savoir si, au point de vue fiscal, les constructions élevées sur les terrains loués étaient, de commun accord, considérées comme accessoires de ces terrains, ou non, et que la solution de cette question ne dépend pas de distinctions tirées d'une prétendue différence quant à la propriété des immeubles,

que le Tribunal ne saurait donc s'arrêter à la discussion engagée à ce sujet et fondée sur les principes du droit civil,

Attendu que les terrains étaient loués pour y construire des maisons, ce qui est indiqué, à la fois, par la situation des immeubles et par la nature des aménagements effectués par le Gouvernement Japonais,

que l'obligation d'ériger des bâtiments était, dans certaines localités, imposée sous peine de déchéance, que les baux contenaient souvent une clause, aux termes de laquelle les bâtiments, qui se trouveraient sur les terrains, deviendraient la propriété du Gouvernement Japonais, au cas où le preneur aurait manqué à ses engagements,

Attendu qu'il faut admettre que les circonstances qui viennent d'être relatées offrent des arguments à l'encontre de la prétention que le sol et les constructions constituent, dans les relations entre les parties et au point de vue fiscal, des objets entièrement distincts,

not only the rent, but also the amount of the imposts for which the lessees would have been liable, by reason of the position created in their favour under the leases, and that, in consequence, they would, as lessees, only have to pay the imposts and charges expressly mentioned in the said leases ;

Whereas, moreover, it is not disputed that this is the true meaning of these instruments as far as the land is concerned, but the Japanese Government allege that the leases only applied to the naked land, and they do not admit that buildings erected on the land were included in the stipulations upon which the exemption from imposts is said to be founded, alleging that the land alone belongs to the Government, the buildings being on the other hand the property of the lessees, and that in consequence the immunity in question could only extend to the ground which had not ceased to be the patrimony of the State ;

Whereas, however, the question to be decided is whether, from the fiscal point of view, the buildings erected on the leased land were, by common accord, considered as accessories of the land or not, and the solution of this question does not depend upon distinctions drawn from an alleged difference as to the ownership of the property ;

Whereas, the Tribunal cannot therefore pay regard to the discussion raised on this subject and based upon principles of civil law ;

Whereas, the land was leased for building purposes, which is indicated both by the situation of the ground and by the nature of the measures taken for its management by the Japanese Government ;

Whereas, the obligation to erect buildings was imposed in certain localities, on pain of forfeiture, and the leases often contained a clause, by the terms of which buildings on the land were to become the property of the Japanese Government, in the event of the lessee not carrying out his engagements ;

Whereas, it must be admitted that the circumstances thus recorded constitute arguments against the plea that the ground and buildings form entirely separate objects in the relations between the parties and from the fiscal point of view ;

Attendu qu'en intervenant aux dits actes, le Gouvernement du Japon a agi, non seulement en propriétaire des terrains donnés en location, mais aussi comme investi du pouvoir souverain du pays,

Attendu que la volonté des parties faisait, par conséquent, la loi en la matière et que, pour établir comment les actes ont été réellement interprétés, il faut s'en rapporter au traitement auquel les détenteurs des terrains ont été, au point de vue des impôts, soumis, en fait, dans les différentes localités,

Attendu, à cet égard, qu'il est constant que, suivant une pratique qui n'a pas varié et qui a existé durant une longue série d'années, non seulement les terrains en question, mais aussi les bâtiments élevés sur ces terrains, ont été exemptés de tous impôts, taxes, charges, contributions ou conditions autres que ceux expressément stipulés dans les baux à perpétuité,

Attendu que le Gouvernement du Japon soutient, il est vrai, que cet état de choses, de même que l'immunité fiscale dont jouissaient en général les étrangers dans le pays, n'était dû qu'à la circonstance que les tribunaux consulaires refusaient de donner la sanction nécessaire aux lois fiscales du pays,

Attendu que, toutefois, cette prétention est dépourvue de preuves et qu'il n'est pas même allégué que le Gouvernement Japonais ait jamais fait, vis à vis des Gouvernements d'Allemagne, de France et de Grande Bretagne, des réserves à l'effet de maintenir les droits qu'il dit avoir été lésés,

que, bien qu'il ait été allégué que l'immunité dont les étrangers jouissaient, en fait, au point de vue des impôts, sous le régime des anciens traités, était générale et qu'elle s'étendait aux étrangers résidant en dehors des concessions en question, il résulte pourtant des renseignements fournis au sujet de détenteurs d'immeubles — terrains et maisons — à Hiogo, que ladite règle n'a pas été d'une application universelle,

que, dans tous les cas, la situation de fait n'est pas douteuse, de quelque façon qu'on l'explique,

Attendu, au point de vue de l'interprétation des dispositions des nouveaux traités au sujet desquelles il y a contestation entre les Parties,

que la rédaction de l'article 18 du traité entre la Grande Bretagne

Whereas, in becoming a party to the said instruments the Government of Japan acted not only as proprietor of the land leased, but also as being invested with the sovereign power of the country ;

Whereas, the will of the parties consequently formed the law in the matter and, in order to ascertain how the instruments have really been interpreted, it is necessary to refer to the treatment to which the holders of the land have in fact been subjected in the different localities, in regard to the imposts ;

Whereas, in this respect, it is unquestionable that, in accordance with a practice which has not varied and which has existed for a long series of years, not only the land in question, but also the buildings erected on the land, have been exempt from all imposts, taxes, charges, contributions, or conditions whatsoever, other than those expressly stipulated in the leases in perpetuity ;

Whereas, the Government of Japan maintains, it is true, that this state of things, as well as the fiscal immunity enjoyed in general by foreigners in the country, was only due to the circumstance that the Consular Tribunals refused to give the necessary sanction to the fiscal laws of the country ;

Whereas, however, this claim is devoid of proof, and it is not even alleged that the Japanese Government ever made reservations to the Governments of Germany, France, and Great Britain, such as to maintain the rights which they say were violated ;

Whereas, although it had been alleged that the immunity from imposts, enjoyed in fact by foreigners under the old Treaties, was general, and that it extended to foreigners residing outside the Concessions in question, information supplied respecting the holders of real estate, land, and houses, at Hiogo, shows that the said rule has not been applied universally, and in any case, the actual situation is not in doubt, however it may be explained ;

Whereas, as regards the interpretation of the provisions of the new Treaties on the subject of which the parties are in disagreement ;

The drawing up of Article XVIII of the Treaty between Great

et le Japon — traité antérieur aux deux autres — avait été précédée de propositions tendant à mettre les étrangers, détenteurs de terrains, sur le même pied que les sujets japonais, tant au point de vue de la propriété des immeubles qui leur avaient été concédés en location que pour ce qui concerne le paiement de taxes et d'impôts, mais qu'on est ensuite tombé d'accord sur le maintien du régime qui jusqu'alors avait été pratiqué,

que le Gouvernement Japonais prétend, il est vrai, que la question de maintenir le *status quo* ne se rapportait qu'aux terrains, mais que cette prétention ne se trouve pas justifiée par les expressions employées au cours des négociations,

qu'au contraire, le représentant du Gouvernement Japonais qui a pris l'initiative pour arriver à un accord dans ce sens s'est borné à proposer le maintien du *status quo* dans les concessions étrangères (*maintenance of the status quo in the foreign settlements*),

qu'il n'est pas à présumer que le délégué de la Grande Bretagne, en présentant un projet élaboré sur la base de ladite proposition, ait entendu faire une restriction concernant les constructions, que cela ne résulte, ni des mots insérés dans le procès-verbal, ni du contenu de l'article par lui proposé,

que, pour maintenir intégralement le *status quo*, il ne suffirait pas d'admettre que l'immunité fiscale, qui jusqu'à cette époque s'étendait, tant sur les terrains que sur les constructions, dans les quartiers étrangers, serait maintenue pour le sol seulement et qu'elle cesserait d'exister pource qui concerne les maisons,

qu'il doit surtout en être ainsi lorsqu'on considère que, pour se conformer à ce qui était convenu, les Parties ne se sont pas bornées à formuler une disposition au sujet de la confirmation des baux, mais qu'elles ont ajouté qu'aucunes conditions, sauf celles contenues dans les baux en vigueur, ne seront imposées relativement à une telle propriété (*no conditions whatsoever other than those contained in such existing leases shall be imposed in respect of such property*),

que cette dernière clause est rédigée d'une façon encore plus explicite dans le traité avec la France,

Attendu qu'au surplus, dans les clauses dont il s'agit, les Puissances n'ont pas parlé de terrains, comme elles auraient dû nécessairement le faire si l'immunité, contrairement à ce qui avait été pratiqué jusque là, avait dû être restreinte aux terrains,

Britain and Japan — which Treaty was concluded earlier than the two others — was preceded by proposals tending to place foreigners holding land on the same footing as Japanese subjects, both with regard to the ownership of the real property which had been leased to them and with regard to the payment of taxes and imposts, but it was finally agreed to maintain the system in practice up to that time ;

The Japanese Government, it is true, contend that the question of maintaining the *status quo* only referred to the land, but this contention is not borne out by the expressions used in the course of the negotiations.

On the contrary, the Representative of the Japanese Government, who took the initiative in coming to an agreement in this sense, confined himself to proposing the “maintenance of the *status quo* in the foreign settlements ;”

It cannot be supposed that the British Delegate, in presenting a draft drawn up on the basis of the said proposal, intended that a reservation should be made with regard to buildings, and that does not follow, either from the words inserted in the record of proceedings, or from the contents of the Article proposed by him ;

To maintain this *status quo* in its integrity, it would not suffice to allow that the fiscal immunity, which up to that time extended both to the land and to the buildings in the foreign settlements, should be maintained for the land only, and that it should cease to apply to the houses ;

This must above all be so when it is considered that, in order to conform to what had been agreed upon, the Parties did not confine themselves to formulating a provision on the subject of the confirmation of the leases, but they added “that no conditions whatsoever other than those contained in such existing leases shall be imposed in respect of such property” ;

This latter clause is worded even more clearly in the Treaty with France ;

Whereas, moreover, in the clauses in question, the Powers have not spoken of land, as they must necessarily have done if the immunity, contrary to the practice obtaining up to then, was to be restricted to the land :

qu'elles ont, au contraire, employé des expressions assez larges pour comprendre dans son ensemble la situation faite par les baux aux preneurs,

Attendu que le Tribunal ne saurait, non plus, admettre que les notes échangées entre les Gouvernements d'Allemagne et du Japon, au moment de la conclusion du nouveau traité, contiennent des explications de nature à placer l'Allemagne dans des conditions moins avantageuses que les deux autres Puissances,

que le Gouvernement du Japon a surtout voulu tirer argument de ce que le Gouvernement Allemand a fondé l'immunité fiscale sur ce qu'il est interdit aux étrangers d'acquérir la propriété de terrains situés au Japon, mais qu'à cet égard il faut considérer qu'en fait les constructions avaient toujours eu le caractère de dépendances des terrains au point de vue des impôts, et qu'il n'est pas à présumer que le Gouvernement Allemand ait entendu renoncer aux avantages consentis en faveur de la Grande Bretagne par le nouveau traité, ce qui serait d'ailleurs en contradiction avec la clause assurant à l'Allemagne le traitement de la nation la plus favorisée,

PAR CES MOTIFS :

Le Tribunal d'Arbitrage, à la majorité des voix, décide et déclare : —

Les dispositions des traités et autres engagements mentionnés dans les protocoles d'arbitrage n'exemptent pas seulement les terrains possédés en vertu des baux perpétuels concédés par le Gouvernement Japonais ou en son nom, mais elles exemptent les terrains et les bâtiments de toute nature construits ou qui pourraient être construits sur ces terrains, de tous impôts, taxes, charges, contributions ou conditions quelconques autres que ceux expressément stipulés dans les baux en question.

Fait à La Haye, dans l'Hôtel de la Cour permanente d'Arbitrage, le 22 mai 1905.

(signé) G. GRAM

(,,) L. RENAULT

Au moment de procéder à la signature de la présente Sentence arbitrale, usant de la faculté que me confère l'article 52, alinéa 2,

Whereas, on the contrary, they used expressions wide enough to include the whole situation created by the leases for the lessees;

Whereas, the Tribunal cannot, moreover, admit that the notes exchanged between the Governments of Germany and Japan, at the time the new Treaty was concluded, contain expressions calculated to place Germany in a less advantageous position than the two other Powers;

The Government of Japan have, above all, endeavored to adduce an argument from the fact that the German Government have based fiscal immunity upon the ground that foreigners are prohibited from acquiring ownership of land situated in Japan, but in this respect it must be considered that in fact the buildings had always had the character of dependencies of the land in regard to imposts, and it cannot be supposed that the German Government intended to renounce privileges conceded to Great Britain by the new Treaty, which would besides be incompatible with the clause securing most-favored-nation treatment to Germany;

FOR THESE REASONS:

The Tribunal of Arbitration, by a majority of votes, decides and declares:

The provisions of the Treaties and other engagements mentioned in the Protocols of Arbitration exempt not only the land held in virtue of the leases in perpetuity granted by or on behalf of the Government of Japan, but they exempt the land and buildings of every description constructed or which may hereafter be constructed on such land, from all imposts, taxes, charges, contributions, or conditions whatsoever, other than those expressly stipulated in the leases in question.

Done at The Hague, at the Permanent Court of Arbitration, the 22nd May, 1905.

(Signed) G. GRAM

(Signed) L. RENAULT

At the moment of proceeding to the signature of the present Award, making use of the power conferred on me by Article LII,

de la *Convention pour le règlement pacifique des conflits internationaux*, conclue à La Haye le 29 juillet 1899, je tiens à constater mon dissentiment absolu avec la majorité du Tribunal, en ce qui concerne les motifs comme le dispositif de la Sentence.

(signé) I. MOTONO

paragraph 2 of the Convention for the Pacific Adjustment of International Disputes, concluded at The Hague on the 29th July, 1899, I desire to place on record my entire disagreement with the majority of the Tribunal, both as regards the argument and the conclusion.

.(Signed) I. MOTONO

IV

FRANCE AND GREAT BRITAIN

RIGHT OF MUSCAT DHOWS TO FLY FLAG

COMPROMIS, OCTOBER, 13, 1904

SESSIONS, JULY 25, 1905-AUGUST 2, 1905, THE HAGUE

AWARD, AUGUST 8, 1905

ARBITRATORS, LAMMASCH, FULLER, DE SAVORNIN, LOHMAN

COMPROMIS ARBITRAL CONCLU À LONDRES LE 13 OCTOBRE 1904,
ENTRE LA FRANCE ET LA GRANDE BRETAGNE, CONCERNANT LE
DIFFÉREND ENTRE CES DEUX PUISSANCES À PROPOS DES BOUTRES
DE MASCATE

Attendu que le Gouvernement Français et celui de Sa Majesté Britannique ont jugé convenable, par la Déclaration du 10 mars 1862, „de s'engager réciproquement à respecter l'indépendance” de Sa Hautesse le Sultan de Mascate;

Attendu que des difficultés se sont élevées sur la portée de cette Déclaration relativement à la délivrance, par la République Française, à certains sujets de Sa Hautesse le Sultan de Mascate de pièces les autorisant à arborer le pavillon Français, ainsi qu'au sujet de la nature des privilèges et immunités revendiqués par les sujets de Sa Hautesse, propriétaires ou commandants de boutres („dhows”) qui sont en possession de semblables pièces ou qui sont membres de l'équipage de ces boutres et leurs familles, particulièrement en ce qui concerne le mode suivant lequel ces privilèges et ces immunités affectent le droit de juridiction de Sa Hautesse le Sultan sur ses dits sujets :

Les soussignés, dûment autorisés à cet effet par leurs Gouvernements respectifs, conviennent, par les présentes, que ces difficultés seront tranchées par voie d'arbitrage conformément à l'Article I de

MUSCAT DHOWS

AGREEMENT BETWEEN GREAT BRITAIN AND FRANCE, REFERRING
TO ARBITRATION THE RIGHT OF CERTAIN MUSCAT DHOWS TO FLY
THE FRENCH FLAG SIGNED AT LONDON, OCTOBER 13, 1904

Whereas the Government of His Britannic Majesty and that of the French Republic have thought it right, by the Declaration of the 10th March 1862, "to engage reciprocally to respect the independence" of His Highness the Sultan of Muscat;

And whereas difficulties as to the scope of that Declaration have arisen in relation to the issue, by the French Republic, to certain subjects of His Highness the Sultan of Muscat of papers authorizing them to fly the French flag, and also as to the nature of the privileges and immunities claimed by subjects of His Highness who are owners or masters of dhows and in possession of such papers or are members of the crew of such dhows and their families, especially as to the manner in which such privileges and immunities affect the jurisdiction of His Highness the Sultan over his said subjects:

The Undersigned, being duly authorized thereto by their respective Governments, hereby agree that these questions shall be determined by reference to arbitration, in accordance with the provisions of Article I of the Convention concluded between the two

la Convention intervenue entre les deux pays, le 14 octobre dernier, et que la décision du Tribunal de La Haye sera définitive.

Il est aussi convenu par les présentes de ce qui suit :

ARTICLE I

Chacune des Hautes Parties Contractantes nommera un Arbitre, et ces deux Arbitres ensemble choisiront un Surarbitre ; si, dans le délai d'un mois à partir de leur nomination, ils ne peuvent tomber d'accord, le choix d'un Surarbitre sera confié à Sa Majesté le Roi d'Italie. Les Arbitres et le Surarbitre ne seront pas sujets ou citoyens de l'une ou l'autre des Hautes Parties Contractantes et seront choisis parmi les membres de la Cour de La Haye.

ARTICLE II

Chacune des Hautes Parties Contractantes devra, dans un délai de trois mois après la signature du présent Compromis, remettre à chaque membre du Tribunal constitué par les présentes, et à l'autre Partie, un Mémoire écrit ou imprimé exposant et motivant sa réclamation et un dossier écrit ou imprimé contenant les documents ou toutes autres pièces probantes écrites ou imprimées sur lesquelles il s'appuie.

Dans les trois mois de la remise des dits Mémoires, chacune des Hautes Parties remettra à chaque membre du Tribunal et à l'autre Partie un Contre-Mémoire écrit ou imprimé, avec les pièces à l'appui.

Dans le mois de la remise des Contre-Mémoires, chaque Partie pourra remettre à chaque Arbitre et à l'autre Partie des conclusions écrites ou imprimées, à l'appui des propositions qu'elle aurait mises en avant.

Les délais fixés par le présent Compromis pour la remise du Mémoire, du Contre-Mémoire, et des conclusions pourront être prolongés d'un commun accord par les Parties Contractantes.

ARTICLE III

Le Tribunal se réunira à La Haye, dans la quinzaine de la remise des Arguments.

Chaque Partie sera représentée par un Agent.

countries on the 14th October last, and that the decision of The Hague Tribunal shall be final.

It is also hereby agreed as follows :

ARTICLE I

Each of the High Contracting Parties shall nominate one Arbitrator, and these two Arbitrators shall together choose an Umpire; if they cannot agree within one month from the date of their appointment, the choice of an Umpire shall be entrusted to His Majesty the King of Italy. The Arbitrators and the Umpire shall not be subjects or citizens of either of the High Contracting Parties, and shall be chosen from among the members of The Hague Tribunal.

ARTICLE II

Each of the High Contracting Parties shall, within three months from the signature of this Agreement, deliver to each member of the Tribunal hereby constituted, and to the other Party, a written or printed Case setting forth and arguing its claims, and a written or printed file containing the documents or any other evidence in writing or print on which it relies.

Within three months after the delivery of the above-mentioned Cases, each of the High Contracting Parties shall deliver to each member of the Tribunal, and to the other Party, a written or printed Counter-Case, with the documents which support it.

Within one month after the delivery of the Counter-Cases, each Party may deliver to each Arbitrator and to the other Party a written or printed argument in support of its contentions.

The time fixed by this Agreement for the delivery of the Case, Counter-Case, and Argument may be extended by the mutual consent of the High Contracting Parties.¹

ARTICLE III

The Tribunal will meet at The Hague within a fortnight of the delivery of the Arguments.

Each Party shall be represented by one Agent.

¹ By agreement of January 13, 1905 the time for delivery was postponed to February 1, 1905, and by agreement of May 19, 1905 the date of the delivery was left to be fixed by the Arbitral Tribunal.

Le Tribunal pourra, s'il juge nécessaire de plus amples éclaircissements en ce qui regarde un point quelconque, demander, à chaque Agent, une explication orale ou par écrit ; mais, en pareil cas, l'autre Partie aura le droit de répliquer.

ARTICLE IV

La décision du Tribunal sera rendue dans les trente jours qui suivront sa réunion à La Haye ou la remise des explications qui auraient été fournies à sa demande, à moins que, à la requête du Tribunal, les Parties Contractantes ne conviennent de prolonger le délai.

ARTICLE V

Les dispositions de la Convention de La Haye, du 29 juillet 1899, s'appliqueront à tous les points non prévus par le présent Compromis.

Fait, en double exemplaire, à Londres, le 13 octobre 1904.

(L.-S.) PAUL CAMBON

(L.-S.) LANSDOWNE

SENTENCE DU TRIBUNAL D'ARBITRAGE CONSTITUÉ EN VERTU DU COMPROMIS SIGNÉ À LONDRES LE 13 OCTOBRE 1904 ENTRE LA FRANCE ET LA GRANDE BRETAGNE

Le Tribunal d'Arbitrage constitué en vertu du Compromis conclu à Londres le 13 octobre 1904, entre la France et la Grande Bretagne ;

Attendu que le Gouvernement Français et celui de Sa Majesté Britannique ont jugé convenable, par la Déclaration du 10 mars 1862, „de s'engager réciproquement à respecter l'indépendance” de Sa Hautesse le Sultan de Mascate,

Attendu que des difficultés se sont élevées sur la portée de cette Déclaration relativement à la délivrance, par la République Française, à certains sujets de Sa Hautesse le Sultan de Mascate de pièces

The Tribunal may, if they shall deem further elucidation with regard to any point necessary, require from either Agent an oral or written statement, but in such case the other Party shall have the right to reply.

ARTICLE IV

The decision of the Tribunal shall be rendered within thirty days of its meeting at The Hague or of the delivery of the statements which may have been supplied at its request, unless, on the request of the Tribunal, the Contracting Parties shall agree to extend the period.

ARTICLE V

On all points not covered by this Agreement, the provisions of the Conventions of The Hague of the 29th July 1899, shall apply.

Done in duplicate at London, the 13th day of October, 1904.

(L. S.) LANSDOWNE

(L. S.) PAUL CAMBON

[OFFICIAL TRANSLATION OF THE AWARD]

AWARD OF THE TRIBUNAL OF ARBITRATION CONSTITUTED IN VIRTUE OF THE COMPROMIS SIGNED AT LONDON ON OCTOBER 13, 1904,
BETWEEN GREAT BRITAIN AND FRANCE¹

The Tribunal of Arbitration constituted in virtue of the Compromis concluded at London on October 13, 1904 between Great Britain and France;

Whereas the Government of His Britannic Majesty and that of the French Republic have thought it right by the Declaration of March 10, 1862 "to engage reciprocally to respect the independence" of His Highness the Sultan of Muscat,

Whereas difficulties as to the scope of that Declaration have arisen in relation to the issue, by the French Republic, to certain subjects of His Highness the Sultan of Muscat of papers authorizing them to

¹ The President of the Tribunal declared on July 25, 1905 that the parties might use French and English in the pleadings. The protocols and award would be drawn up in French which would be of "authentic value" but would be accompanied by an official English translation.

les autorisant à arborer le pavillon Français, ainsi qu'au sujet de la nature des privilèges et immunités revendiqués par les sujets de Sa Hautesse, propriétaires ou commandants de boutres („dhows") qui sont en possession de semblables pièces ou qui sont membres de l'équipage de ces boutres et leurs familles, particulièrement en ce qui concerne le mode suivant lequel ces privilèges et ces immunités affectent le droit de juridiction de Sa Hautesse le Sultan sur ses dits sujets,

Attendu que les deux Gouvernements sont tombés d'accord par le Compromis du 13 octobre 1904 de faire décider ces difficultés par voie d'arbitrage conformément à l'article 1 de la Convention conclue par les deux Puissances le 14 octobre 1903,

Attendu qu'en exécution de ce Compromis ont été nommés Arbitres,

par le Gouvernement de Sa Majesté Britannique :

Monsieur Melville W. Fuller, Chief Justice des Etats-Unis d'Amérique, et

par le Gouvernement de la République Française :

Monsieur le Jonkheer A. F. de Savornin Lohman, Docteur en droit, ancien Ministre de l'Intérieur des Pays-Bas, ancien Professeur à l'Université libre à Amsterdam, Membre de la Seconde Chambre des Etats-Généraux,

Attendu que ces Arbitres n'étant pas tombés d'accord dans le délai d'un mois à partir de leur nomination sur le choix d'un Surarbitre, ce choix étant dévolu dès lors en vertu de l'article 1 du Compromis au Roi d'Italie, Sa Majesté a nommé comme Surarbitre :

Monsieur Henri Lammasch, Docteur en droit, Professeur de droit international à l'Université à Vienne, Membre de la Chambre des Seigneurs du Parlement Autrichien,

Attendu que les Mémoires, Contre-Mémoires et Conclusions ont été dûment communiqués au Tribunal et aux Parties,

Attendu que le Tribunal a examiné avec soin ces documents, et les observations supplémentaires qui leur ont été présentées par les deux Parties ;

QUANT À LA PREMIÈRE QUESTION :

Considérant, qu'en général il appartient à tout Souverain de décider à qui il accordera le droit d'arborer son pavillon et de fixer

fly the French flag, and also as to the nature of the privileges and immunities claimed by subjects of His Highness who are owners or masters of dhows and in possession of such papers or are members of the crew of such dhows and their families, especially as to the manner in which such privileges and immunities affect the jurisdiction of His Highness the Sultan over his said subjects,

Whereas the two Governments have agreed by the Compromis of October 13, 1904 that these questions shall be determined by reference to arbitration, in accordance with the provisions of article 1 of the Convention concluded between the two Powers on the 14th of October 1903,

Whereas in virtue of that Compromis were named as Arbitrators, by the Government of His Britannic Majesty :

Mr. Melville W. Fuller, Chief Justice of the United States of America, and

by the Government of the French Republic :

Jonkheer A. F. de Savornin Lohman, Doctor of Law, former Minister of the Interior in the Netherlands, former Professor at the free University at Amsterdam, Member of the Second Chamber of the States-General,

Whereas the two Arbitrators not having agreed within one month from the date of their appointment in the choice of an Umpire, and that choice having then been intrusted in virtue of article 1 of the Compromis to the King of Italy, His Majesty has named Umpire :

Mr. H. Lammasch, Doctor of Law, Professor at the University at Vienna, Member of the Upper House of the Austrian Parliament,

Whereas the Cases, Counter-Cases and Arguments have been duly communicated to the Tribunal and to the Parties,

Whereas the Tribunal has carefully examined these documents, and the supplementary observations which were delivered to it by the two Parties ;

AS TO THE FIRST QUESTION :

Whereas generally speaking it belongs to every Sovereign to decide to whom he will accord the right to fly his flag and to prescribe the

les règles auxquelles l'octroi de ce droit sera soumis, et considérant qu'en conséquence l'octroi du pavillon Français à des sujets de Sa Hautesse le Sultan de Mascate ne constitue en soi aucune atteinte à l'indépendance du Sultan,

Considérant que néanmoins un Souverain peut être limité dans l'exercice de ce droit par des traités, et considérant que le Tribunal en vertu de l'article 48 de la Convention pour le règlement pacifique des conflits internationaux du 29 juillet 1899 et de l'article 5 du Compromis du 13 octobre 1904 „est autorisé à déterminer sa compétence en interprétant le compromis ainsi que les autres traités qui peuvent être invoqués dans la matière, et en appliquant les principes du droit international,” et qu'en conséquence la question se pose sous quelles conditions les Puissances qui ont accédé à l'Acte Général de la Conférence de Bruxelles du 2 juillet 1890 concernant la suppression de la traite des esclaves africaine, spécialement à l'article 32 de cet Acte, ont le droit d'autoriser des navires indigènes à arborer leurs pavillons,

Considérant que par l'article 32 de cet Acte la faculté des Puissances Signataires d'octroyer leur pavillon à des navires indigènes a été limitée dans le but de supprimer la traite des esclaves et dans les intérêts généraux de l'humanité, sans faire aucune distinction si celui qui sollicite le droit d'arborer le pavillon appartient à un état signataire ou non, et considérant qu'en tout cas la France est liée vis à vis de la Grande Bretagne de n'octroyer son pavillon que sous les conditions prescrites par cet Acte,

Considérant que pour atteindre le but susdit les Puissances Signataires de l'Acte de Bruxelles sont convenues par l'article 32, que l'autorisation d'arborer le pavillon d'une des dites Puissances ne sera accordée à l'avenir qu'aux bâtiments indigènes qui satisferont à la fois aux trois conditions suivantes :

1°. Les armateurs ou propriétaires devront être sujets ou protégés de la Puissance dont ils demandent à porter les couleurs,

2°. Ils seront tenus d'établir qu'ils possèdent des biens-fonds dans la circonscription de l'autorité à qui est adressée leur demande, ou de fournir une caution solvable pour la garantie des amendes qui pourraient être éventuellement encourues,

rules governing such grants, and whereas therefore the granting of the French flag to subjects of His Highness the Sultan of Muscat in itself constitutes no attack on the independence of the Sultan,

Whereas nevertheless a Sovereign may be limited by treaties in the exercise of this right, and whereas the Tribunal is authorized in virtue of article 48 of the Convention for the pacific settlement of international disputes of July 29, 1899 and of article 5 of the Compromis of October 13, 1904 "to declare its competence in interpreting the compromis as well as the other treaties which may be invoked in the case, and in applying the principles of international law," and whereas therefore the question arises, under what conditions Powers which have acceded to the General Act of the Brussels Conference of July 2, 1890 relative to the African Slave Trade, especially to article 32 of this Act, are entitled to authorize native vessels to fly their flags,

Whereas by article 32 of this Act the faculty of the Signatory Powers to grant their flag to native vessels has been limited for the purpose of suppressing slave trading and in the general interests of humanity, irrespective of whether the applicant for the flag may belong to a state signatory of this Act or not, and whereas at any rate France is in relation to Great Britain bound to grant her flag only under the conditions prescribed by this Act,

Whereas in order to attain the above mentioned purpose, the Signatory Powers of the Brussels Act have agreed in its article 32 that the authority to fly the flag of one of the Signatory Powers shall in future only be granted to such native vessels, which shall satisfy all the three following conditions :

1. Their fitters-out or owners must be either subjects of or persons protected by the Power whose flag they claim to fly,
2. They must furnish proof that they possess real estate situated in the district of the authority to whom their application is addressed, or supply a solvent security as a guarantee for any fines to which they may eventually become liable,

3°. Les dits armateurs ou propriétaires, ainsi que le capitaine du bâtiment, devront fournir la preuve qu'ils jouissent d'une bonne réputation et notamment n'avoir jamais été l'objet d'une condamnation pour faits de traite,

Considérant qu'à défaut d'une définition du terme „protégé” dans l'Acte Général de la Conférence de Bruxelles, il faut entendre ce terme dans le sens qui correspond le mieux tant aux intentions élevées de cette Conférence et de l'Acte Final qui en est résulté, qu'aux principes du droit international tels qu'ils ont été exprimés dans les conventions en vigueur à cette époque, dans la législation nationale en tant qu'elle a obtenu une reconnaissance internationale et dans la pratique du droit des gens,

Considérant que le but de l'article 32 susdit est de n'admettre à la navigation dans ces mers infestées par la traite des esclaves que ceux des navires indigènes qui sont soumis à la plus stricte surveillance des Puissances Signataires, condition dont l'accomplissement ne peut être assuré que si les propriétaires, armateurs et équipages de ces navires sont exclusivement soumis à la souveraineté et à la juridiction de l'Etat, sous le pavillon duquel ils exercent la navigation,

Considérant que depuis la restriction que le terme „protégé” a subie en vertu de la législation de la Porte Ottomane en 1863, 1865 et 1869, spécialement de la loi Ottomane du 23 sefer 1280 (août 1863), implicitement acceptée par les Puissances qui jouissent du droit des capitulations, et depuis le traité conclu entre la France et le Maroc en 1863, auquel ont accédé un grand nombre d'autres Puissances et qui a obtenu la sanction de la Convention de Madrid du 30 juillet 1880, le terme „protégé” n'embrasse par rapport aux Etats à capitulations que les catégories suivantes : 1°. les personnes sujets d'un pays qui est sous le protectorat de la Puissance dont elles réclament la protection, 2°. les individus qui correspondent aux catégories énumérées dans les traités avec le Maroc de 1863 et de 1880 et dans la loi Ottomane de 1863, 3°. les personnes, qui par un traité spécial ont été reconnues comme „protégés,” telles que celles énumérées par l'article 4 de la Convention Franco-Mascataise de 1844 et 4°. les individus qui peuvent établir qu'ils ont été considérés et traités comme protégés par la Puissance en question avant l'année dans laquelle la création de nouveaux protégés fut réglée et

3. Such fitters-out or owners, as well as the captain of the vessel, must furnish proof that they enjoy a good reputation, and especially that they have never been condemned for acts of slave trade,

Whereas in default of a definition of the term "protégé" in the General Act of the Brussels Conference this term must be understood in the sense which corresponds best as well to the elevated aims of the Conference and its Final Act, as to the principles of the law of nations, as they have been expressed in treaties existing at that time, in internationally recognized legislation and in international practice,

Whereas the aim of the said article 32 is to admit to navigation in the seas infested by slave trade only those native vessels which are under the strictest surveillance of the Signatory Powers, a condition which can only be secured if the owners, fitters-out and crews of such vessels are exclusively subjected to the sovereignty and jurisdiction of the State, under whose flag they are sailing,

Whereas since the restriction which the term "protégé" underwent in virtue of the legislation of the Ottoman Porte of 1863, 1865 and 1869, especially of the Ottoman law of 23 Sefer 1280 (August 1863) implicitly accepted by the Powers who enjoy the rights of capitulations, and since the Treaty concluded between France and Morocco in 1863, to which a great number of other Powers have acceded and which received the sanction of the Convention of Madrid of July 30, 1880, the term "protégé" embraces in relation to States of capitulations only the following classes 1°. persons being subjects of a country which is under the protectorate of the Power whose protection they claim, 2°. individuals corresponding to the classes enumerated in the treaties with Morocco of 1863 and 1880 and in the Ottoman law of 1863, 3°. persons, who under a special treaty have been recognized as "protégés" like those enumerated by article 4 of the French Muscat Convention of 1844 and 4°. those individuals who can establish that they had been considered and treated as "protégés" by the Power in question before the year in which the creation of new "protégés" was regulated and limited,

limitée, c'est-à-dire avant l'année 1863, ces individus n'ayant pas perdu leur *status* une fois légitimement acquis,

Considérant que, quoique les Puissances n'aient renoncé *expressis verbis* à l'exercice du prétendu droit de créer des protégés en nombre illimité que par rapport à la Turquie et au Maroc, néanmoins l'exercice de ce prétendu droit a été abandonné de même par rapport aux autres Etats Orientaux, l'analogie ayant toujours été reconnue comme un moyen de compléter les dispositions écrites très défectueuses des capitulations, en tant que les circonstances sont analogues,

Considérant d'autre part que la concession *de facto* de la part de la Turquie, de transmettre le *status* de „protégés” aux descendants de personnes qui en 1863 avaient joui de la protection d'une Puissance Chrétienne, ne peut être étendue par analogie à Mascate, les circonstances étant entièrement différentes, puisque les protégés des Etats Chrétiens en Turquie sont d'une race, nationalité et religion différentes de celles de leurs maîtres Ottomans, tandis que les habitants de Sour et les autres Mascatais qui pourraient solliciter le pavillon Français, se trouvent à tous ces égards entièrement dans la même condition que les autres sujets du Sultan de Mascate,

Considérant que les dispositions de l'article 4 du Traité Franco-Mascatais de 1844 s'appliquent seulement aux personnes qui sont *bona fide* au service des Français, mais pas aux personnes qui demandent des titres de navires dans le but d'exercer quelque commerce,

Considérant que le fait d'avoir donné avant la ratification de la Convention de Bruxelles le 2 janvier 1892 des autorisations d'arborer le pavillon Français à des navires indigènes ne répondant pas aux conditions prescrites par l'article 32 de cet Acte n'était pas en contradiction avec une obligation internationale de la France,

PAR CES MOTIFS,

décide et prononce ce qui suit :

1°. avant le 2 janvier 1892 la France avait le droit d'autoriser des navires appartenant à des sujets de Sa Hautesse le Sultan de Mascate à arborer le pavillon Français, n'étant liée que par ses propres lois et règlements administratifs ;

2°. les boutriers, qui avant 1892 avaient été autorisés par la

that is to say before the year 1863, these individuals not having lost the *status* they had once legitimately acquired,

Whereas that, although the Powers have *expressis verbis* resigned the exercise of the pretended right to create "protégés" in unlimited number only in relation to Turkey and Morocco, nevertheless the exercise of this pretended right has been abandoned also in relation to other Oriental States, analogy having always been recognized as a mean to complete the very deficient written regulations of the capitulations as far as circumstances are analogous,

Whereas on the other hand the concession *de facto* made by Turkey, that the status of "protégés" be transmitted to the descendants of persons, who in 1863 had enjoyed the protection of a Christian Power, cannot be extended by analogy to Muscat, where the circumstances are entirely dissimilar, the "protégés" of the Christian Powers in Turkey being of race, nationality and religion different from their Ottoman rulers, whilst the inhabitants of Sur and other Muscat people who might apply for French flags, are in all these respects entirely in the same condition as the other subjects of the Sultan of Muscat,

Whereas the dispositions of article 4 of the French-Muscat Treaty of 1844 apply only to persons who are *bona fide* in the service of French subjects, but not to persons who ask for ships-papers for the purpose of doing any commercial business,

Whereas the fact of having granted before the ratification of the Brussels Act on January 2, 1892 authorizations to fly the French flag to native vessels not satisfying the conditions prescribed by article 32 of this Act was not in contradiction with any international obligation of France,

FOR THESE REASONS,

decides and pronounces as follows :

1°. *before the 2nd of January 1892 France was entitled to authorize vessels belonging to subjects of His Highness the Sultan of Muscat to fly the French flag, only bound by her own legislation and administrative rules ;*

2°. *owners of dhows, who before 1892 have been authorized*

France à arborer le pavillon Français, conservent cette autorisation aussi longtemps que la France la continue à celui qui l'avait obtenue;

3°. après le 2 janvier 1892 la France n'avait pas le droit d'autoriser des navires appartenant à des sujets de Sa Hautesse le Sultan de Mascate à arborer le pavillon Français, que sous condition que leurs propriétaires ou armateurs avaient ou auraient établi qu'ils ont été considérés et traités par la France comme ses „protégés” avant l'année 1863;

QUANT A LA 2^{ME} QUESTION :

Considérant que la situation légale de navires portant des pavillons étrangers et des propriétaires de ces navires dans les eaux territoriales d'un Etat Oriental est déterminée par les principes généraux de juridiction, par les capitulations ou autres traités et par la pratique qui en est résultée,

Considérant que les termes du Traité d'Amitié et de Commerce entre la France et l'Iman de Mascate du 17 novembre 1844 sont, surtout en raison des expressions employées dans l'article 3 „Nul ne pourra, sous aucun prétexte, pénétrer dans les maisons, magasins et autres propriétés, possédés ou occupés par des Français ou par des personnes au service des Français, ni les visiter sans le consentement de l'occupant, à moins que ce ne soit avec l'intervention du Consul de France,” assez larges pour embrasser aussi bien des navires que d'autres propriétés,

Considérant que, quoiqu'il ne saurait être nié qu'en admettant le droit de la France d'octroyer dans certaines circonstances son pavillon à des navires indigènes et de soustraire ces navires à la visite par les autorités du Sultan ou en son nom, la traite des esclaves est facilitée, parce que les marchands d'esclaves pour se soustraire à la recherche peuvent facilement abuser du pavillon Français, la possibilité d'un tel abus, qui peut être entièrement supprimé par l'accession de toutes les Puissances à l'article 42 de l'Acte de Bruxelles, ne peut exercer aucune influence sur la décision de cette affaire, qui ne doit être fondée que sur des motifs d'ordre juridique,

Considérant qu'en vertu des articles 31-41 de l'Acte de Bruxelles l'octroi du pavillon à un navire indigène est strictement limité

by France to fly the French flag, retain this authorization as long as France renews it to the grantee;

3°. after January 2, 1892 France was not entitled to authorize vessels belonging to subjects of His Highness the Sultan of Muscat to fly the French flag, except on condition that their owners or fitters-out had established or should establish that they had been considered and treated by France as her "protégés" before the year 1863;

AS TO THE 2ND QUESTION:

Whereas the legal situation of vessels flying foreign flags and of the owners of such vessels in the territorial waters of an Oriental State is determined by the general principles of jurisdiction, by the capitulations or other treaties and by the practice resulting therefrom,

Whereas the terms of the Treaty of Friendship and Commerce between France and the Iman of Muscat of November 17, 1844 are, particularly in view of the language of article 3 "*Nul ne pourra, sous aucun prétexte, pénétrer dans les maisons, magasins et autres propriétés, possédés ou occupés par des Français ou par des personnes au service des Français, ni les visiter sans le consentement de l'occupant, à moins que ce ne soit avec l'intervention du Consul de France,*" comprehensive enough to embrace vessels as well as other property,

Whereas, although it cannot be denied that by admitting the right of France to grant under certain circumstances her flag to native vessels and to have these vessels exempted from visitation by the authorities of the Sultan or in his name, slave trade is facilitated, because slave traders may easily abuse the French flag, for the purpose of escaping from search, the possibility of this abuse, which can be entirely suppressed by the accession of all Powers to article 42 of the Brussels Convention, cannot affect the decision of this case, which must only rest on juridical grounds,

Whereas according to the articles 31-41 of the Brussels Act the grant of the flag to a native vessel is strictly limited to this vessel

à ce navire et à son propriétaire et que dès lors il ne peut être transmis ou transféré à quelque autre personne ni à quelque autre navire, même si celui-ci appartenait au même propriétaire,

Considérant que l'article 4 du Traité Franco-Mascatais assure aux sujets de Sa Hautesse le Sultan de Mascate „qui seront au service des Français” la même protection qu'aux Français eux-mêmes, mais considérant que les propriétaires, commandants et équipages des boutres autorisés à arborer le pavillon Français n'appartiennent pas à cette catégorie de personnes et encore moins les membres de leurs familles,

Considérant que le fait de soustraire ces personnes à la souveraineté, spécialement à la juridiction, de Sa Hautesse le Sultan de Mascate serait en contradiction avec la Déclaration du 10 mars 1862, par laquelle la France et la Grande Bretagne se sont engagées réciproquement à respecter l'indépendance de ce Prince,

PAR CES MOTIFS,

décide et prononce ce qui suit :

1°. *les boutres („dhows”) de Mascate qui ont été autorisés ainsi qu'il a été indiqué ci-dessus, à arborer le pavillon Français ont dans les eaux territoriales de Mascate le droit à l'inviolabilité, réglée par le Traité Franco-Mascatais du 17 novembre 1844;*

2°. *l'autorisation d'arborer le pavillon Français ne peut être transmise ou transférée à quelque autre personne ou à quelque autre boutre („dhow”), même si celui-ci appartenait au même propriétaire;*

3°. *les sujets du Sultan de Mascate, qui sont propriétaires ou commandants de boutres („dhows”) autorisés à arborer le pavillon Français ou qui sont membres des équipages de tels boutres ou qui appartiennent à leurs familles ne jouissent en conséquence de ce fait d'aucun droit d'exterritorialité, qui pourrait les exempter de la souveraineté, spécialement de la juridiction, de Sa Hautesse le Sultan de Mascate.*

Fait à La Haye, dans l'Hôtel de la Cour permanente d'Arbitrage,
le 8 août 1905.

(signé) H. LAMMASCH

” MELVILLE W. FULLER

” A. F. DE SAVORNIN LOHMAN

and its owner and therefore not transmissible or transferable to any other person or to any other vessel, even if belonging to the same owner,

Whereas article 4 of the French-Muscat Treaty of 1844 grants to those subjects of His Highness the Sultan of Muscat "qui seront au service des Français" the same protection as to the French themselves, but whereas the owners, masters and crews of dhows authorized to fly the French flag do not belong to that class of persons and still less do the members of their families,

Whereas the withdrawal of these persons from the sovereignty, especially from the jurisdiction of His Highness the Sultan of Muscat would be in contradiction with the Declaration of March 10, 1862, by which France and Great Britain engaged themselves reciprocally to respect the independence of this Prince,

FOR THESE REASONS,

decides and pronounces as follows :

1°. dhows of Muscat authorized as aforesaid to fly the French flag are entitled in the territorial waters of Muscat to the inviolability provided by the French-Muscat Treaty of November 17, 1844;

2°. the authorization to fly the French flag cannot be transmitted or transferred to any other person or to any other dhow, even if belonging to the same owner;

3°. subjects of the Sultan of Muscat, who are owners or masters of dhows authorized to fly the French flag or who are members of the crews of such vessels or who belong to their families, do not enjoy in consequence of that fact any right of exterritoriality, which could exempt them from the sovereignty, especially from the jurisdiction, of His Highness the Sultan of Muscat.

Done at The Hague, in the Permanent Court of Arbitration,
August 8, 1905.

(signed) H. LAMMASCH

" MELVILLE W. FULLER

" A. F. DE SAVORNIN LOHMAN

V

FRANCE AND GERMANY

DESERTERS AT CASABLANCA

COMPROMIS, NOVEMBER 10, 1908

SESSIONS, MAY 1, 1909-MAY 17, 1909, THE HAGUE

AWARD, MAY 22, 1909

ARBITRATORS, HAMMARSKJÖLD, FRY, FUSINATO, KRIEGE, RENAULT

COMPROMIS D'ARBITRAGE RELATIF AUX QUESTIONS SOULEVÉES
PAR LES ÉVÉNEMENTS QUI SE SONT PRODUITS À CASABLANCA, LE
25 SEPTEMBRE 1908. SIGNÉ À BERLIN, LE 24 NOVEMBRE 1908

COMPROMIS

Le Gouvernement Impérial Allemand et le Gouvernement de la République Française s'étant mis d'accord, le 10 novembre 1908, pour soumettre à l'arbitrage l'ensemble des questions soulevées par les événements qui se sont produits à Casablanca, le 25 septembre dernier, les soussignés, dûment autorisés à cet effet, sont convenus du compromis suivant :

ARTICLE I

Un tribunal arbitral, constitué comme il est dit ci-après, est chargé de résoudre les questions de fait et de droit que soulèvent les événements qui se sont produits à Casablanca, le 25 septembre dernier, entre des agents des deux pays.

ARTICLE II

Le tribunal arbitral sera composé de cinq arbitres pris parmi les membres de la Cour Permanente d'Arbitrage de La Haye.

Chaque Gouvernement, aussitôt que possible, et dans un délai qui n'excédera pas quinze jours à partir de la date du présent compromis, choisira deux arbitres dont un seul pourra être son national, les

DESERTERS AT CASABLANCA

COMPROMIS OF ARBITRATION CONCERNING THE QUESTIONS RAISED
BY THE EVENTS WHICH OCCURRED AT CASABLANCA ON THE 25TH OF
SEPTEMBER 1908. SIGNED AT BERLIN, NOVEMBER 24, 1908

COMPROMIS

The Imperial German Government and the Government of the French Republic having agreed, November 10, 1908, to submit to arbitration all the questions raised by the events which occurred at Casablanca on the 25th of last September, the undersigned, duly authorized for that purpose, have agreed upon the following compromis :

ARTICLE I

An arbitral tribunal, constituted as hereinafter provided, is charged with the decision of the questions of fact and of law arising from the events which occurred at Casablanca on the 25th of last September between the officials of the two countries.

ARTICLE II

The arbitral tribunal shall be composed of five arbitrators selected from the members of the Permanent Court of Arbitration at The Hague.

Each Government, as soon as possible, and in a period which shall not exceed fifteen days from the date of the present compromis, shall choose two arbitrators, of which only one may be a national.

quatre arbitres ainsi désignés choisiront un surarbitre dans la quinzaine du jour où leur désignation leur aura été notifiée.

ARTICLE III

Le 1^{er} février 1909, chaque partie remettra au Bureau de la Cour Permanente dix-huit exemplaires de son mémoire avec les copies certifiées conformes de toutes pièces et documents qu'elle compte invoquer dans la cause. Le Bureau en assurera sans retard la transmission aux arbitres et aux parties, savoir, de deux exemplaires pour chaque arbitre, de trois exemplaires pour chaque partie. Deux exemplaires resteront dans les archives du Bureau.

Le 1^{er} avril 1909, les parties déposeront dans la même forme leurs contre-mémoires avec les pièces à l'appui et leurs conclusions finales.

ARTICLE IV

Chaque partie devra déposer au Bureau International, au plus tard le 15 avril 1909, la somme de 3,000 florins néerlandais, à titre d'avance pour les frais du litige.

ARTICLE V

Le tribunal se réunira à La Haye le 1^{er} mai 1909 et procédera immédiatement à l'examen du litige.

Il aura la faculté de se transporter momentanément ou de déléguer un ou plusieurs de ses membres pour se transporter en tel lieu qu'il lui semblerait utile, en vue de procéder à des mesures d'information dans les conditions de l'article 20 de la Convention du 18 octobre 1907 pour le règlement pacifique des conflits internationaux.

ARTICLE VI

Les parties peuvent faire usage de la langue allemande ou de la langue française.

Les membres de tribunal peuvent se servir, à leur choix, de la langue allemande ou de la langue française. Les décisions du tribunal seront rédigées dans les deux langues.

ARTICLE VII

Chaque partie sera représentée par un agent spécial avec mission de servir d'intermédiaire entre elle et le tribunal. Ces agents

The four arbitrators thus selected shall choose an umpire within fifteen days after the date when they shall have been notified of their selection.

ARTICLE III

On the 1st of February, 1909, each party shall forward to the Bureau of the Permanent Court eighteen copies of its case with duly certified copies of all papers and documents which it intends to present in the case. The Bureau will communicate without delay to the arbitrators and to the parties, two copies for each arbitrator, three copies for each party. Two copies shall remain in the archives of the Bureau.

The 1st of April, 1909, the parties shall in the same manner deposit their counter-cases with the related papers and their final conclusions.

ARTICLE IV

Each party shall deposit with the International Bureau, not later than April 15, 1909, the sum of 3,000 Netherlands florins, as security for the expenses of the litigation.

ARTICLE V

The tribunal will meet at The Hague May 1, 1909, and will proceed at once to consider the case.

It shall be entitled to move temporarily or to delegate one or more of its members to move to such place as may seem useful in order to proceed with measures of inquiry under the conditions of article 20 of the convention of October 18, 1907 for the pacific settlement of international disputes.

ARTICLE VI

The parties may make use of the German or the French language.

The members of the tribunal may use, according to their choice, the German or the French language. The decisions of the tribunal shall be drawn up in both languages.

ARTICLE VII

Each party shall be represented by a special agent with duty to serve as intermediary between it and the tribunal. These agents

donneront les éclaircissements qui leur seront demandés par le tribunal et pourront présenter les moyens qu'ils jugeraient utiles à la défense de leur cause.

ARTICLE VIII

Pour tout ce qui n'est pas prévu par le présent compromis, les stipulations de la Convention précitée du 18 octobre 1907, dont la ratification n'a pas encore eu lieu, mais qui a été signée également par l'Allemagne et la France, seront applicables au présent arbitrage.

ARTICLE IX

Après que le tribunal arbitral aura résolu les questions de fait et de droit qui lui sont soumises, il réglera en conséquence la situation des individus arrêtés le 25 septembre dernier au sujet de laquelle il y a contestation.

Fait en double à Berlin, le 24 novembre 1908.

(L. S.) gez. : KIDERLEN

(L. S.) gez. : JULES CAMBON

SENTENCE ARBITRALE, RENDUE LE 22 MAI 1909 DANS L'AFFAIRE DE CASABLANCA

Considérant que, par un Protocole du 10 novembre 1908 et par un Compromis du 24 du même mois, le Gouvernement de la République française et le Gouvernement impérial allemand se sont mis d'accord pour charger un Tribunal arbitral, composé de cinq membres, de résoudre les questions de fait et de droit que soulèvent les événements qui se sont produits à Casablanca, le 25 septembre 1908, entre des agents des deux pays;

Considérant que, en exécution de ce Compromis, les deux Gouvernements ont désigné respectivement comme Arbitres,

le Gouvernement de la République française : le très honorable Sir Edward Fry, Docteur en droit, autrefois siégeant à la Cour d'appel, Membre du Conseil privé du Roi, Membre de la Cour permanente d'Arbitrage, et M. Louis Renault, Membre de l'Institut de France, Ministre plénipotentiaire, Professeur à la Faculté de

shall give the explanations which may be demanded of them by the tribunal and may present the arguments which they judge useful for the defense of their case.

ARTICLE VIII

For all matters for which provision is not made in the present compromis, the stipulations of the above mentioned Convention of October 18, 1907, of which the ratification has not yet taken place, but which has been signed by both Germany and France, shall be applicable to the present arbitration.

ARTICLE IX

After the arbitral tribunal has decided the questions of fact and of law which are submitted to it, it shall determine conformably the situation of the individuals arrested on the 25th of last September about whom there is dispute.

Done in duplicate at Berlin, November 24, 1908.

(L. S.) KJDERLEN

(L. S.) JULES CAMBON

ARBITRAL AWARD RENDERED MAY 22, 1909 IN THE CASABLANCA AFFAIR

Whereas, by a protocol of November 10, 1908, and by a compromis of the 24th of the same month, the Government of the French Republic and the Imperial German Government have agreed to submit to an arbitral tribunal, composed of five members, the decision of questions of fact and of law growing out of the events which occurred at Casablanca on September 25, 1908, between the agents of the two countries;

Whereas, in the fulfillment of this compromis, the two governments have designated respectively as arbitrators,

the Government of the French Republic: the Right Honorable Sir Edward Fry, Doctor of Laws, former member of the court of appeal, member of the privy council of the King, member of the permanent court of arbitration, and Mr. Louis Renault, member of the Institute of France, Minister Plenipotentiary, Professor in the

droit de Paris, Jurisconsulte du Ministère des Affaires Etrangères, Membre de la Cour permanente d'Arbitrage ;

et le Gouvernement impérial allemand : M. Guido Fusinato, Docteur en droit, ancien Ministre de l'Instruction publique, ancien Professeur de droit international à l'Université de Turin, Député au Parlement italien, Conseiller d'Etat, Membre de la Cour permanente d'Arbitrage, et M. Kriege, Docteur en droit, Conseiller actuel intime de Légation, Conseiller rapporteur et Jurisconsulte au Département des Affaires Etrangères, Membre de la Cour permanente d'Arbitrage ;

Que les Arbitres ainsi désignés chargés, de nommer un Surarbitre, ont choisi comme tel M. K. Hj. L. de Hammarskjöld, Docteur en droit, ancien Ministre de la Justice, ancien Ministre des Cultes et de l'Instruction publique, ancien Envoyé extraordinaire et Ministre plénipotentiaire à Copenhague, ancien Président de la Cour d'Appel de Jönköping, ancien Professeur à la Faculté de droit d'Upsal, Gouverneur de la Province d'Upsal, Membre de la Cour permanente d'Arbitrage ;

Considérant que, conformément aux dispositions du Compromis du 24 novembre 1908, les mémoires et contre-mémoires ont été dûment échangés entre les Parties et communiqués aux Arbitres ;

Considérant que le Tribunal, constitué comme il est dit ci-dessus, s'est réuni à La Haye le 1^{er} mai 1909 ;

Que les deux Gouvernements ont respectivement désigné comme Agents,

le Gouvernement de la République française : M. André Weiss, Professeur à la Faculté de droit de Paris, Jurisconsulte adjoint du Ministère des Affaires Etrangères,

et le Gouvernement impérial allemand : M. Albrecht Lentze, Docteur en droit, Conseiller intime de Légation, Conseiller rapporteur au Département des Affaires Etrangères ;

Considérant que les Agents des Parties ont présenté au Tribunal les conclusions suivantes :

savoir, l'Agent du Gouvernement de la République française :

PLAISE AU TRIBUNAL,

Dire et juger que c'est à tort que le Consul et les agents du Consulat impérial allemand à Casablanca ont tenté de

Faculty of Law at Paris, counsel of the Ministry of Foreign Affairs, member of the Permanent Court of Arbitration ;

and the Imperial German Government : Mr. Guido Fusinato, Doctor of Laws, former Minister of Public Instruction, former Professor of International Law at the University of Turin, Deputy in the Italian Parliament, Councillor of State, member of the Permanent Court of Arbitration, and Mr. Kriege, Doctor of Laws, at present Privy Councillor of Legation, Counsel and Jurisconsult of the Department of Foreign Affairs, member of the Permanent Court of Arbitration ;

As the arbitrators thus designated, instructed to name an umpire, have chosen Mr. K. Hj. L. de Hammarskjöld, Doctor of Laws, former Minister of Justice, former Minister of Religion and Public Instruction, former Envoy Extraordinary and Minister Plenipotentiary at Copenhagen, former President of the Court of Appeal at Jönköping, former Professor of the Faculty of Law at Upsala, Governor of the province of Upsala, member of the Permanent Court of Arbitration ;

Whereas, according to the provisions of the compromis of November 24, 1908, the cases and counter-cases have been duly exchanged between the parties and communicated to the arbitrators ;

Whereas, the tribunal as above constituted met at The Hague on the 1st of May, 1909 ;

As the two governments have designated as agents respectively, the Government of the French Republic : Mr. André Weiss, professor in the Faculty of Law at Paris, assistant counsel of the Ministry of Foreign Affairs,

and the Imperial German Government : Mr. Albrecht Lentze, Doctor of Laws, Privy Councillor of Legation, Counsel of the Department of Foreign Affairs ;

Whereas, the agents of the parties have presented to the tribunal the following conclusions ; that is to say,

The agent of the Government of the French Republic :

MAY IT PLEASE THE TRIBUNAL,

To declare and decide that it was wrong for the consul and the agents of the Imperial German consulate at Casa-

faire embarquer sur un navire allemand des déserteurs de la Légion étrangère française, ne ressortissant pas à la nationalité allemande ;

Dire et juger que c'est à tort que le même Consul et les mêmes agents ont, dans les mêmes conditions, accordé, sur le territoire occupé par le corps de débarquement français à Casablanca, leur protection et leur assistance matérielle à trois autres légionnaires, qu'ils croyaient ou qu'ils pouvaient croire Allemands, méconnaissant ainsi les droits exclusifs de juridiction qui appartiennent à l'État occupant, en territoire étranger, même en pays de Capitulations, au regard des soldats de l'armée d'occupation, et des actes, quels qu'ils soient et d'où qu'ils viennent, qui sont de nature à compromettre sa sécurité ;

Dire et juger qu'aucune atteinte n'a été portée, en la personne de M. Just, chancelier du Consulat impérial à Casablanca, et du soldat marocain Abd-el-Kerim ben Mansour, à l'inviolabilité consulaire, par les officiers, soldats et marins français qui ont procédé à l'arrestation des déserteurs ; et qu'en repoussant les attaques et les voies de fait dirigées contre eux, les dits officiers, soldats et marins se sont bornés à user du droit de légitime défense.

Et l'Agent du Gouvernement impérial allemand (*conclusions traduites*),

PLAISE AU TRIBUNAL,

1°. En ce qui concerne les questions de fait,

Déclarer que trois individus qui avaient antérieurement servi dans la Légion étrangère française, Walter Bens, Heinrich Heinemann et Julius Meyer, tous trois Allemands, ont, le 25 septembre 1908, au port de Casablanca, pendant qu'ils étaient accompagnés par des agents de l'Allemagne, été violemment arrachés à ces derniers et arrêtés par des agents de la France ; qu'à cette occasion des agents de l'Allemagne ont été attaqués, maltraités, outragés et menacés par des agents de la France ;

blanca to attempt to have the non-German deserters of the French foreign legion embarked on the German ship ;

To declare and decide that it was wrong for the same consul and the same agents, in the same conditions, to accord, in the territory occupied by the French corps on disembarking at Casablanca, their protection and their material assistance to the other three legionaries whom they believed or might have believed Germans ; not recognizing the rights of exclusive jurisdiction which appertain to the occupying state in foreign territory, as well as in countries under capitulations, as regards the soldiers of the army of occupation, and the actions whatever they may be or from wherever they may come which are of a nature to compromise its safety.

To declare and decide that no attack had been made, in the person of M. Just, secretary of the Imperial consulate at Casablanca, and of the Moroccan soldier, Abd-el-kerim ben Mansour, on the consular inviolability, by the French officers, soldiers and marines who had acted in the arrest of the deserters ; and that in resisting the attacks and the assaults made upon them the said officers, soldiers, and marines confined themselves to the exercise of the right of lawful defense.

And the agent of the Imperial German Government,

MAY IT PLEASE THE TRIBUNAL,

1st. As regards the questions of fact,

To declare that the three individuals who had previously served in the French foreign legion, Walter Bens, Heinrich Heinemann and Julius Meyer, all three Germans, on September 25, 1908, at the port of Casablanca, while they were accompanied by the agents of Germany, were violently taken from the latter and arrested by the agents of France ; that on that occasion the agents of Germany were attacked, maltreated, outraged and threatened by the agents of France ;

2°. En ce qui concerne les questions de droit,

Déclarer que les trois individus mentionnés au No. 1 étaient, au 25 septembre 1908, soumis exclusivement à la juridiction et à la protection du Consulat impérial allemand à Casablanca ; que des agents de la France n'étaient pas alors autorisés à entraver l'exercice par des agents de l'Allemagne de la protection allemande sur ces trois individus et à revendiquer de leur côté sur eux un droit de juridiction ;

3°. En ce qui concerne la situation des individus arrêtés le 25 septembre 1908 au sujet de laquelle il y a contestation,

Décider que le Gouvernement de la République française, aussitôt que possible, se dessaisira des trois Allemands désignés au No. 1 et les mettra à la disposition du Gouvernement allemand.

Considérant que l'Agent de la République française a, dans l'audience du 17 mai 1909, déclaré que, dans ses conclusions, il ne s'agit, soit pour les déserteurs de nationalité allemande, soit pour les autres, que des mesures prises par des agents allemands après la désertion et en vue de faire embarquer les déserteurs ;

Considérant qu'après que le Tribunal eut entendu les exposés oraux des Agents des Parties et les explications qu'ils lui ont fournies sur sa demande, les débats ont été déclarés clos dans l'audience du 17 mai 1909 ;

Considérant que, d'après le régime des Capitulations en vigueur au Maroc, l'autorité consulaire allemande exerce, en règle générale, une juridiction exclusive sur tous les ressortissants allemands qui se trouvent dans ce pays ;

Considérant que, d'autre part, un corps d'occupation exerce aussi, en règle générale, une juridiction exclusive sur toutes les personnes appartenant audit corps d'occupation ;

Que ce droit de juridiction doit être reconnu, toujours en règle générale, même dans les pays soumis au régime des Capitulations ;

Considérant que, dans le cas où des ressortissants d'une Puissance qui bénéficie au Maroc du régime des Capitulations appartiennent au corps d'occupation envoyé dans ce pays par une autre Puissance,

2nd. As regards the questions of law,

To declare that the three individuals mentioned under number one were, on the 25th of September 1908, subject exclusively to the jurisdiction and to the protection of the Imperial German consulate at Casablanca; that the agents of France were not authorized, therefore, to oppose the exercise by the agents of Germany of the German protection over these three individuals and to claim on their side a right of jurisdiction over them;

3d. As regards the situation of the individuals arrested on the 25th of September 1908 about whom there is dispute,

To decide that the Government of the French Republic as soon as possible shall release the three Germans named under number one and shall turn them over to the German Government.

Whereas, the agent of the French Republic declared at the session of May 17, 1909, that in his conclusions he was only concerned, whether as regards the deserters of German nationality or as regards the others, with the measures taken by the German agents after the desertion and for the purpose of embarking the deserters;

Whereas, after the tribunal had listened to the oral statements of the agents of the Parties and to the explanations which they furnished on request, the discussion was declared closed at the session of May 17, 1909;

Whereas, according to the rule of the capitulations in force in Morocco, the German consular authority exercises as a general rule an exclusive jurisdiction over German subjects who happen to be in that country;

Whereas, on the other hand, an occupying army exercises as a general rule an exclusive jurisdiction over all persons appertaining to the said occupying army;

As this right of jurisdiction should always be recognized also as a general rule in countries subject to the rule of capitulations;

Whereas, in a case where the subjects of one power, which benefits from the rule of the capitulations in Morocco, belong to the occupying army sent into this country by another power, there results,

il se produit, par la force des choses, un conflit entre les deux juridictions sus-indiquées ;

Considérant que le Gouvernement français n'a pas fait connaître la composition du corps expéditionnaire et n'a pas déclaré que le fait de l'occupation militaire modifiait la juridiction consulaire exclusive découlant du régime des Capitulations ; que, d'autre part, le Gouvernement allemand n'a pas réclamé au sujet de l'emploi au Maroc de la Légion étrangère qui, notoirement, est, pour une certaine partie, composée de ressortissants allemands ;

Considérant qu'il n'appartient pas à ce Tribunal d'émettre une opinion sur l'organisation de la Légion étrangère ou sur son emploi au Maroc ;

Considérant que le conflit de juridictions dont il a été parlé ne saurait être décidé par une règle absolue qui accorderait d'une manière générale la préférence, soit à l'une, soit à l'autre des deux juridictions concurrentes ;

Que, dans chaque cas particulier, il faut tenir compte des circonstances de fait qui sont de nature à déterminer la préférence ;

Considérant que la juridiction du corps d'occupation doit, en cas de conflit, avoir la préférence, lorsque les personnes appartenant à ce corps n'ont pas quitté le territoire placé sous la domination immédiate, durable et effective de la force armée ;

Considérant qu'à l'époque dont il s'agit, la ville fortifiée de Casablanca était militairement occupée et gardée par des forces militaires françaises qui constituaient la garnison de cette ville et se trouvaient, soit dans la ville même, soit dans les camps environnants ;

Considérant que, dans ces conditions, les déserteurs de nationalité allemande, appartenant aux forces militaires de l'un de ces camps et étant dans l'enceinte de la ville, restaient soumis à la juridiction militaire exclusive ;

Considérant, d'autre part, que, la question de la compétence respective, en pays de Capitulations, de la juridiction consulaire et de la juridiction militaire étant très compliquée et n'ayant pas reçu de solution expresse, nette et universellement reconnue, l'autorité consulaire allemande ne saurait encourir aucun blâme pour avoir accordé sa protection aux déserteurs susnommés, qui l'avaient sollicitée ;

by the force of circumstances, a conflict between the two above mentioned jurisdictions ;

Whereas, the French Government did not make known the composition of the expeditionary troop and did not declare that the military occupation modified the exclusive consular jurisdiction growing out of the rule of the capitulations ; whereas, on the other hand, the German Government did not protest upon the subject of the use in Morocco of the foreign legion which is well known to be composed in part of German subjects ;

Whereas, it does not appertain to this tribunal to express an opinion on the organization of the foreign legion or on its use in Morocco ;

Whereas, the conflict of jurisdictions which has been mentioned cannot be decided by an absolute rule which accords the preference in a general manner either to the one or to the other of the two concurrent jurisdictions ;

As, in each particular case it is necessary to take account of the actual circumstances which are of a nature to determine the preference ;

Whereas, the jurisdiction of the occupying army ought, in case of conflict, to have the preference when the persons belonging to this army have not left the territory placed under the immediate, actual, and effective control of the armed force ;

Whereas, at the time in question the fortified city of Casablanca was under military occupation and guard of the French military forces who constituted the garrison of that city and were either in the city itself or in the neighboring camps ;

Whereas, under these conditions, the deserters of German nationality, belonging to the military forces of one of the camps and being in the precincts of the city, remained subject to the exclusive military jurisdiction ;

Whereas, on the other hand, the question of the respective competence in countries under capitulations of consular jurisdiction and of military jurisdiction being very complicated and never having received a definite solution, clearly and universally recognized, the German consular authority cannot incur any blame for having accorded his protection to the above mentioned deserters who had asked it ;

Considérant que le Consul allemand à Casablanca n'a pas accordé la protection du Consulat aux déserteurs de nationalité non allemande et que le drogman du Consulat n'a pas non plus dépassé à ce sujet les limites de sa compétence ;

Considérant que le fait que le Consul a signé, sans le lire, le sauf-conduit portant *six* personnes au lieu de *trois* et omettant l'indication de la nationalité allemande, telle qu'il l'avait lui-même prescrite, ne peut lui être imputé que comme une faute non intentionnelle ;

Considérant que le soldat marocain du Consulat, en contribuant à l'embarquement des déserteurs, n'a fait qu'agir d'après les ordres de ses supérieurs et que, à raison de sa situation inférieure, aucune responsabilité personnelle ne saurait peser sur lui ;

Considérant que le Secrétaire du Consulat a intentionnellement cherché à faire embarquer des déserteurs de nationalité non allemande comme jouissant de la protection du Consulat ;

Qu'à cette fin, il a, de propos délibéré, amené le Consul à signer le sauf-conduit mentionné ci-dessus ; et que, dans la même intention, il a pris des mesures tant pour conduire au port que pour faire embarquer ces déserteurs ;

Qu'en agissant ainsi, il est sorti des limites de sa compétence et a commis une violation grave et manifeste de ses devoirs ;

Considérant que les déserteurs de nationalité allemande se sont trouvés au port sous la protection de fait de l'autorité consulaire allemande et que cette protection n'était pas manifestement illégale ;

Considérant que cette situation de fait aurait dû, dans la mesure du possible, être respectée par l'autorité militaire française ;

Considérant que les déserteurs de nationalité allemande ont été arrêtés par cette autorité malgré les protestations faites au nom du Consulat ;

Considérant que l'autorité militaire aurait pu et, par conséquent, dû se borner à empêcher l'embarquement et la fuite de ces déserteurs et, avant de procéder à leur arrestation et à leur emprisonnement, à offrir de les laisser en séquestre au Consulat allemand, jusqu'à ce que la question de la juridiction compétente eût été résolue ;

Que cette manière de procéder aurait aussi été de nature à main-

Whereas, the German consul at Casablanca did not accord the protection of the consulate to the deserters of non-German nationality, and as the dragoman of the consulate did not exceed in this regard the limits of his authority;

Whereas, the fact that the consul signed, without reading it, the safe-conduct providing for six persons instead of three and omitting the indication of German nationality, such as he had himself ordered, can be imputed to him only as an unintentional mistake;

Whereas, the Moroccan soldier of the consulate, in aiding the embarkation of the deserters, acted only in accord with the orders of his superiors, and as, by reason of his subordinate position, no personal responsibility can be attached to him;

Whereas, the secretary of the consulate intentionally sought to embark the deserters of non-German nationality as entitled to the protection of the consulate;

As, to that end, he with deliberate purpose induced the consul to sign the safe conduct mentioned above; and as, with the same intention, he took measures both to conduct these deserters to the port and to have them embarked;

As, in thus acting, he exceeded the limits of his authority and committed a grave and manifest violation of his duty;

Whereas, the deserters of German nationality were at the port under the actual protection of the German consular authority, and as that protection was not manifestly illegal;

Whereas, that de facto situation should have been respected, as far as possible, by the French military authorities;

Whereas, the deserters of German nationality had been arrested by that authority in spite of the protests made in the name of the consulate;

Whereas, the military authority could have and consequently should have confined itself to preventing the embarkation and the flight of these deserters, and before proceeding to their arrest and imprisonment, to offering to leave them sequestered in the German consulate until the question of the competent jurisdiction had been settled;

As that manner of procedure would also have been of a nature to

tenir le prestige de l'autorité consulaire, conformément aux intérêts communs de tous les Européens vivant au Maroc ;

Considérant que, même si l'on admet la légalité de l'arrestation, les circonstances ne justifiaient, de la part de militaires français, ni la menace faite à l'aide d'un revolver, ni la prolongation des coups portés au soldat marocain du Consulat même après que sa résistance avait été brisée ;

Considérant que, quant aux autres outrages ou voies de fait allégués de part et d'autre, l'enchaînement et la nature exacte des événements sont impossibles à établir ;

Considérant que, conformément à ce qui a été dit plus haut, les déserteurs de nationalité allemande auraient dû être remis au Consulat pour rétablir la situation de fait troublée par leur arrestation ;

Que cette restitution aurait aussi été désirable en vue de maintenir le prestige consulaire ;

Mais, considérant que, dans l'état actuel des choses, ce Tribunal étant appelé à déterminer la situation définitive des déserteurs, il n'y a plus lieu d'ordonner la remise provisoire et temporaire qui aurait dû s'effectuer.

PAR CES MOTIFS,

Le Tribunal arbitral

Déclare et prononce ce qui suit :

C'est à tort et par une faute grave et manifeste que le Secrétaire du Consulat impérial allemand à Casablanca a tenté de faire embarquer, sur un vapeur allemand, des déserteurs de la Légion étrangère française qui n'étaient pas de nationalité allemande.

Le Consul allemand et les autres agents du Consulat ne sont pas responsables de ce chef, toutefois, en signant le sauf-conduit qui lui a été présenté, le Consul a commis une faute non intentionnelle.

Le Consulat allemand n'avait pas, dans les conditions de l'espèce, le droit d'accorder sa protection aux déserteurs de nationalité allemande ; toutefois, l'erreur de droit commise sur ce point par les fonctionnaires du Consulat ne saurait leur être

maintain the prestige of the consular authority, in conformity with the common interest of all Europeans living in Morocco ;

Whereas, even if one admits the legality of the arrest, the circumstances justified on the part of the French soldiers, neither the threat made with the revolver, nor the continuation of the blows struck the Moroccan soldier of the consulate even after his resistance had been overcome ;

Whereas, as regards the other outrages or assaults alleged on both sides, it is impossible to establish the connection or the exact nature of the events ;

Whereas, in conformity with what has been said above, the deserters of German nationality should have been returned to the consulate in order to restore the actual situation disturbed by their arrest ;

As that restitution would have been desirable with view to maintaining the consular prestige ;

But, whereas, in the present state of affairs, this tribunal being called to determine the definitive situation of the deserters, there is no more occasion to order the provisional and temporary restoration which should have been made ;

FOR THESE REASONS,

The arbitral tribunal

Declares and awards as follows,

It was wrong and through a grave and manifest fault that the secretary of the Imperial German consulate at Casablanca attempted to have embarked, on a German steamship, the deserters from the French foreign legion who were not of German nationality.

The German consul and the other officers of the consulate were not responsible in this regard, however, in signing the safe-conduct which was presented to him, the consul committed an unintentional mistake.

The German consulate had not, under circumstances of this kind, the right to grant its protection to deserters of German nationality ; however, the error of law committed on this point

imputée comme une faute, soit intentionnelle, soit non intentionnelle.

C'est à tort que les autorités militaires françaises n'ont pas, dans la mesure du possible, respecté la protection de fait exercée sur ces déserteurs au nom du Consulat allemand.

Même abstraction faite du devoir de respecter la protection consulaire, les circonstances ne justifiaient, de la part de militaires français, ni la menace faite à l'aide d'un revolver, ni la prolongation des coups donnés au soldat marocain du Consulat.

Il n'y a pas lieu de donner suite aux autres réclamations contenues dans les conclusions des deux Parties.

Fait à *La Haye*, dans l'Hôtel de la Cour permanente d'Arbitrage,
le 22 mai 1909.

Le Président : HJ. L. HAMMARSKJÖLD

Le Secrétaire général : MICHELS VAN VERDUYNEN

by the officers of the consulate cannot be imputed against them either as an intentional or unintentional mistake.

It was wrong for the French military authorities not to respect as far as possible, the actual protection exercised over these deserters in the name of the German consulate.

Even setting aside the obligation to respect consular protection, the circumstances did not warrant, on the part of the French soldiers, either the threat made with the revolver or the continuation of the blows struck the Moroccan soldier of the consulate.

There is no occasion for passing on the other charges contained in the conclusions of the two parties.

Done at The Hague, in the Hall of the Permanent Court of Arbitration, May 22, 1909.

President: HJ. L. HAMMARSKJÖLD

Secretary-General: MICHIELS VAN VERDUYNEN

VI

NORWAY AND SWEDEN

MARITIME FRONTIER

COMPROMIS, MARCH 14, 1908

SESSIONS, AUGUST 28, 1909—OCTOBER 18, 1909, THE HAGUE AND ELSEWHERE

AWARD, OCTOBER 23, 1909.

ARBITRATORS, LOEFF,¹ BEICHMANN,¹ HAMMARSKJÖLD

CONVENTION DU MARS 14, 1908

SUÈDE

Hans Majestät Konungen af Sverige och hans Majestät Konungen af Norge, som funnit, att frågan om sjögränsen mellan Sverige och Norge, i den mån denna gräns icke redan blifvit bestämd genom kungl. beslutet den 15 mars 1904, bör hänskjutas till skiljedom, hafva för detta ändamål till Sina fullmäktige utsett:

Hans Majestät Konungen af Sverige:

Sin minister för utrikes ärendena Eric Birger Trolle;

Hans Majestät Konungen af Norge:

Sin envoyé extraordinaire och ministre plénipotentiaire Paul Benjamin Vogt,

hvilka, efter att hafva meddelat hvarandra sina fullmakter, som befunnits i god och behörig form, öfverenskommit om följande bestämmelser:

NORVEGE

Hans Majestaet Kongen av Sverige og Hans Majestaet Kongen av Norge, som har fundet, at spørgsmaalet om sjögrænsen mellem Sverige och Norge i den utstrækning, hvori den ikke er blevet bestemt ved resolution av 15 mars 1904, bør henskytes till avgjorelse ved voldgift, har i dette öiemed opnaevnt som sine befuldmaegtigede:

Hans Majestaet Kongen av Sverige:

Sin minister for de utenrikske anliggender, Eric Birger Trolle;

Hans Majestaet Kongen av Norge:

Sin overordentlige utsending og befuldmaegtigede minister i Stockholm Paul Benjamin Vogt,

hvilke, efter at ha meddelt hinanden sine fuldmagter, som fandtes i god og behörig form, er kommet overens om följende artikler:

¹ Not members of Permanent Court. Special Tribunal.

SWEDEN — NORWAY

CONVENTION TO SETTLE, BY MEANS OF ARBITRATION, DIFFERENCES
RELATING TO THE MARITIME BOUNDARY BETWEEN THE TWO COUN-
TRIES; SIGNED AT STOCKHOLM, MARCH 14, 1908. (RATIFICATIONS
EXCHANGED AT STOCKHOLM, JUNE 17, 1908)

His Majesty the King of Sweden and His Majesty the King of
Norway, agreeing that the question concerning the maritime bound-
ary between Sweden and Norway in that part which was not
determined by the resolution of March 15, 1904, ought to be referred
for final decision to arbitration, have to this end appointed as
their plenipotentiaries:

His Majesty the King of Sweden:

His minister of foreign affairs,

Eric Birger Trolle;

His Majesty the King of Norway:

His envoy extraordinary and minister plenipotentiary at Stock-
holm,

Paul Benjamin Vogt,

who, after having exchanged their full powers, which were found
to be in good and proper form, have agreed upon the following
articles:

ART. I

Parterna förbinda sig att i nedan angifna omfång öfverlämna frågan om sjögränsen mellan Sverige och Norge till slutligt afgörande genom en skiljedomstol, bestående af en ordförande, som icke är någondera partens undersåte eller bosatt i någondera landet, samt af två andra ledamöter, en svensk och en norsk.

Ordföranden utses af Hennes Majestät Drottningen af Nederländerna, de öfriga ledamöterna en af hvardera parten. Parterna förbehålla sig dock att, i händelse de därom kunna enas, genom en särskild öfverenskomelse utse vare sig blott ordföranden eller skiljedomstolens samtliga ledamöter. Framställning till Hennes Majestät Drottningen af Nederländerna eller skiljedomare, som må blifva utsedd genom öfverenskomelse, skall göras af båda parterna gemensamt.

ART. 2

Skiljedomstolen skall, efter pröfning af parternas yrkanden samt till stöd därför anförda skäl och bevis, fastställa gränslinjen i vattnet från punkt XVIII å den vid de svenska och norska kommissariernas förslag af 18 augusti 1897 fogade karta ut i hafvet intill territorialgränsen. Det är öfverenskommet, att ytterlinjerna för det område, som genom parternas yrkande kan göras till föremål för tvist och inom hvilket gränsen alltså skall fastställas, icke må dragas så att däraf omfattas öar, holmar och skär, som ej ständigt öfversköljas af vattnet.

ART. 3

Skiljedomstolen äger att afgöra, huruvida gränslinjen bör anses vara, helt eller till viss sträckning, bestämd genom gränstraktaten af 1661 med därtill hörande karta och huru den sålunda bestämda gränslinjen bör

ART. I

Parterne förpligter sig til i den nedenfor angivne utstrækning at undergi spørgsmaalet om sjögrænsen mellem Sverige og Norge endelig avgjorelse av en voldgiftsret, bestaaende av en praesident, som ikke er nogen av parternes undersaat eller bosat i noget av de to lande, samt av to andre medlemmer, en svensk og en norsk.

Praesidenten vælges av Hendes Majestaet Dronningen av Nederlandene, de øvrige medlemmer en av hver part. Parterne forbeholder sig dog i tilfaelde av, at de derom kan enes, ved saerskilt overenskomst at utse enten alene praesidenten eller voldgiftsrettens samtlige medlemmer. Henvendelse til Hendes Majestaet Dronningen av Nederlandene eller til voldgiftsdommer, som maate bli utseet gjennem overenskomst, skal rettes av begge parter i faelleskap.

ART. II

Voldgiftsretten skal efter ad ha prøvet parternes paastande og de til støtte derfor anførte grunde og bevisligheter fastsaette grænsellinjen i vandet fra punkt XVIII paa det kart, som er bilagt de svenske og norske kommissaerers forslag av 18 august 1897, ut i havet indtil territorialgrænsen. Det er overenskommet, at yderlinjerne for det omraade, som ved parternes paastande kan gjøres til gjenstand for tvist, og indenfor hvilket grænsen altsaa skal fastsaettes, ikke maa drages saaledes, at deri indbefattes øer, holmer og skjaer, som ikke stadig overskylles av vandet.

ART. III

Voldgiftsretten har at avgjøre, hvorvidt grænsellinjen bør ansees for at vaere helt eller paa en vis strækning fastslaaet ved grænsetraktaten av 1661 med dertil hørende kart, og hvorledes den saaledes

ARTICLE I

The contracting parties bind themselves to submit the question as to the hereinafter to be indicated part of the maritime boundary between Sweden and Norway to final settlement by a court of arbitration, consisting of a president, who is the subject of neither party and is not domiciled in either country, together with two other members, one Swedish and one Norwegian.

The president is to be chosen by Her Majesty the Queen of the Netherlands, the other members one by each party. The parties reserve to themselves, nevertheless, the right to select in case they can agree together either the president alone or the other members of the court of arbitration. Reference to Her Majesty the Queen of the Netherlands, or to an arbitrator, who shall be chosen by agreement, shall be had by both parties jointly.

ARTICLE II

The court of arbitration, after having heard the claims of the parties and the arguments and evidence brought forth in support of these, shall determine the boundary line in the waters starting from the point indicated as XVIII on the map annexed to the project of the Swedish and Norwegian commissioners, August 18, 1897, in the sea to the limit of territorial waters. It is agreed that the line bounding the zone which, in consequence of the claims of the parties, may be the subject of litigation, and within which the boundary line will therefore be established, should not be drawn so as to include islands, islets, or reefs which are not always under water.

ARTICLE III

The court of arbitration shall decide whether the boundary line should be considered, either wholly or in part, as fixed in the boundary treaty of 1661 with the map thereto annexed, and in what manner the line thus established, should be drawn, as also in so far

uppdragas, samt att, för så vidt gränslinjen anses ej vara genom ifrågavarande traktat och karta bestämd, fastställa densamma med afseende på faktiska förhållanden och folkrättsliga principer.

ART. 4

Intill utgången af tredje kalenderåret efter det, hvarunder skiljedomstolens slutliga beslut meddelas, må oberoende af den gränslinje, som genom berörda beslut fastställas, fiske inom det område, som enligt art. 2 kan vara föremål för tvist, idkas af hvardera rikets undersåtar i samma omfattning som under femårsperioden 1901-05. Vid bedömande af fiskets omfattning tages hänsyn till de fiskandes antal, fiskets art och fångstsättet.

ART. 5

Det är öfverenskommet, att det rike, på hvars sida om den blifvande gränslinjen fiskegrundet *Grisebådarne* är beläget, icke gentemot det andra riket äger något anspråk på deltagande i kostnaden för fyrskepp eller liknande anordningar på eller i närheten af nämnda grund.

Sverige förbinder sig att bibehålla det nuvarande, utanför territorialgränsen utlagda fyrskeppet intill utgången af den i art. 4 nämnda tid.

ART. 6

Skiljedomstolens ordförande ut-sätter tid och ort för domstolens första sammanträde och kallar till detta sammanträde de öfriga ledamöterna.

Tid och ort för ytterligare sammanträden bestämmas af skiljedomstolen.

ART. 7

Det officiella språk, som af skiljedomstolen användes, skall vara engelska, franska eller tyska, enligt

bestemte gränselinje bör optraekkes, samt forsaavidt gränselinjen ikke ansees at vaere bestemt ved omhandlede traktat og kart, at fastsaette samme under hensyn til faktiske forhold og folkeretslige principer.

ART. IV

Indtil utgangen av det tredje kalenderaar efter det, i hvilket voldgiftsrettens endelige beslutning meddeles, skal uten hensyn til den gränselinje, som gjennom naevnte beslutning fastaettes, fiske kunne drives av hvert rikes undersaatte indenfor det omraade, som efter art. II kan vaere gjenstand for tvist, i samme utstraekning som under femaarsperioden 1901-1905. Ved bedømmelsen av fiskets utstraekning tages hensyn til de fiskendes antal, fiskets art og fangstmaaten.

ART. V

Det er overenskommet, at det rike, paa hvis side av den blivende gränselinje fiskegrunderne "*Grisebaaerne*" er beliggende, ikke overfor det andet rike har krav paa deltagelse i omkostninger til fyrskib eller lignende foranstaltninger paa eller i naerheten av naevnte grunder.

Sverige forpligter sig til at bibeholde det nuvaerende utenfor territorialgränsen anlagte fyrskib indtil utgangen av den i art. IV naevnte overgangstid.

ART. VI

Voldgiftsrettens praesident bestemmer tid og sted rettens første sammentraede og varsler de övrige medlemmer om dette sammentraede.

Tid og sted for videre sammentraede bestemmes av voldgiftsretten.

ART. VII

Det officielle sprog, som af voldgiftsretten blir at anvende, skal vaere engelsk, fransk eller

as the boundary line shall not be considered as fixed by that treaty and map, the court shall fix the boundary line, having regard to the circumstances of fact and the principles of international law.

ARTICLE IV

Until the close of the third calendar year following that in which final decision of the court of arbitration is rendered, fishing may be carried on by the subjects of both kingdoms in that region which by Art. II may be the subject of dispute in the same manner as during the five year period 1901-1905, without any reference to the boundary line which is established by the aforementioned decision. In judging of the extent of the fishery, account shall be taken of the number of fishermen, the kind of fish, and the method of fishing.

ARTICLE V

It is agreed that the kingdom on the side of which the Grisbadarne fishing grounds are situated, according to the boundary to be established, shall have no claim against the other kingdom for paying any of the expenses of the lightship or similar apparatus in or near the said grounds.

Sweden binds itself to keep up the lightship at present maintained outside the territorial boundary, until the expiration of the transition period specified in Art. IV.

ARTICLE VI

The president of the court of arbitration shall fix the time and place for the first meeting of the court, and shall notify the other members of this meeting.

The time and place of later meetings shall be determined by the court of arbitration.

ARTICLE VII

The official languages which may be used by the court of arbitration shall be English, French, or German, conformably to a resolu-

bestämmande, som träffas af ord-föranden efter samråd med de öfriga ledamöterna.

Parterna må dessutom i inlagor, bevismedel och anföranden begagna någotdera landets språk, skiljedomstolen obetaget att låta verkställa öfversättning.

ART. 8

I afseende å förfarandet och omkostnaderna skola i tillämpliga delar gälla de bestämmelser, som innefattas i art. 62-85 af den på andra fredskonferensen i Haag 1907 antagna reviderade konvention för afgörandet på fredlig väg af internationella tvister.

Inlagor, repliker och bevismedel, som afses i art. 63 nom. 2 af nämnda konvention, skola delgifvas inom tider, som af skiljedomstolens ordförande bestämmas, och sist före den 1 mars 1909. Härigenom verkas ej rubbning i föreskrifterna om förfarandets andra afdelning, särskildt icke i bestämmelserna i art. 68-72 och 74 af samma konvention.

Skiljedomstolen äger, när den för sakens upplysning finner nödigt, anordna förhör, i båda parternas närvaro, med vittnen eller sakkunniga samt föreskrifva verkställandet af gemensamma hydrografiska undersökningar beträffande det tvistiga området.

ART. 9

Denna konvention skall ratificeras och ratifikationerna utväxlas i Stockholm snarast möjligt.

Till bekräftelse häraf hafva vederbörande fullmäktige undertecknat denna konvention och försett den med sina sigill.

Utfärdad i två exemplar på svenska och norska i Stockholm den 14 mars 1908.

(L. S.) ERIC TROLLE

tysk overensstemmende med beslutning, som fattes av praesidenten efter samraad med de övriga medlemmer.

Parterne kan desuten i indlaeg, bevismidler og anførsler benytte hvert av de to landes sprog, idet det er voldgiftsretten forbeholdt at foranstalte oversaettelse.

ART. VIII

Med hensyn til proceduren og omkostningerne kommer til anvendelse, forsaavidt de kan tillempes, de bestemmelser, som indeholdes i artiklerne 62 til 85 i den paa den anden fredskonference i Haag i 1907 vedtagne reviderede konvention om fredelig avgjorelse av internationale stridigheder.

Indlaeg, repliker og bevismidler, hvortil sigtes i art. 63, 2 afsnit, i naevnte konvention, skal meddeles inden de tidsfrister, som av voldgiftsrettens praesident bestemmes, og senest inden 1 mars 1909. Herved sker ingen aendring i reglerne for procedurens anden afdeling, specielt ikke i bestemmelserne i art. 68-72 og 74 i samme konvention.

Voldgiftsretten har adgang til, naar den for sakens oplysning finder det nødvendigt, at foranstalte avhorelse i begge parters naerwaer av vidner og sakyndige samt til at beslutte iverksaettelse av faelles hydrografiske undersøkelser vedrørende det omtvistede omraade.

ART. IX

Denne konvention skal ratificeres og ratifikationerne utvexles i Stockholm snarest mulig.

Til bekraeftelse herav har de respektive befuldmægtigede underteignet denne konvention og forsynet den med sine segl.

Udfaerdiget i to exemplarer paa svensk og norsk in Stockholm den 14 mars 1908.

(L. S.) BENJAMIN VOGT

tion which shall be made by the president after consultation with the other members.

The parties may besides use their own languages in pleading, testimony, and arguments, inasmuch as it is reserved to the court of arbitration to provide for translations.

ARTICLE VIII

In regard to procedure and expenses, the provisions, in so far as they can be applied, which are contained in Articles 62 to 85 of the revised convention for the pacific settlement of international disputes, adopted at the Second Peace Conference at The Hague, 1907, shall be employed.

Pleadings, replies and testimony, to which reference is made in Art. 63, 2nd paragraph, of the said convention, shall be communicated within such periods of time as shall be determined by the president of the court of arbitration, and, at the latest, by March 1, 1909. This is not intended to make any alterations in the rules for other parts of the procedure, especially not in the provisions in Articles 68-72 and 74 of the same convention.

The court of arbitration shall have permission in case it finds it necessary for elucidation of the matter, to conduct a hearing in the presence of both parties of witnesses and experts, as also to decide upon the execution of joint hydrographic surveys concerning the disputed region.

ARTICLE IX

This convention shall be ratified, and ratifications shall be exchanged at Stockholm at the earliest date possible.

In testimony whereof the respective plenipotentiaries have subscribed this convention and sealed it with their seals.

Done in duplicate in Swedish and Norwegian in Stockholm, March 14, 1908.

(L. S.) ERIC TROLLE

(L. S.) BENJAMIN VOGT

SENTENCE ARBITRALE RENDUE LE 23 OCTOBRE 1909 DANS LA
QUESTION DE LA DÉLIMITATION D'UNE CERTAINE PARTIE DE LA
FRONTIÈRE MARITIME ENTRE LA NORVÈGE ET LA SUÈDE

Considérant que, par une Convention du 14 mars 1908, la Norvège et la Suède se sont mises d'accord pour soumettre à la décision définitive d'un Tribunal arbitral, composé d'un Président qui ne sera ni sujet d'aucune des Parties contractantes ni domicilié dans l'un des deux pays, et de deux autres Membres, dont l'un sera Norvégien et l'autre Suédois, la question de la frontière maritime entre la Norvège et la Suède, en tant que cette frontière n'a pas été réglée par la Résolution Royale du 15 mars 1904 ;

Considérant que, en exécution de cette Convention, les deux Gouvernements ont désigné respectivement comme Président et Arbitres :

Monsieur J. A. Loeff, Docteur en droit et en sciences politiques ancien Ministre de la Justice, Membre de la Seconde Chambre des Etats-Généraux des Pays-Bas ;

Monsieur F. V. N. Beichmann, Président de la Cour d'appel de Trondhjem, et

Monsieur K. Hj. L. de Hammarskjöld, Docteur en droit, ancien Ministre de la Justice, ancien Ministre des Cultes et de l'Instruction publique, ancien Envoyé extraordinaire et Ministre plénipotentiaire à Copenhague, ancien Président de la Cour d'appel de Jönköping, ancien Professeur à la Faculté de droit d'Upsal, Gouverneur de la Province d'Upsal, Membre de la Cour permanente d'Arbitrage ;

Considérant que, conformément aux dispositions de la Convention, les Mémoires, Contre-Mémoires et Répliques ont été dûment échangés entre les Parties et communiqués aux Arbitres dans les délais fixés par le Président du Tribunal ;

Que les deux Gouvernements ont respectivement désigné comme Agents,

le Gouvernement de la Norvège : Monsieur Kristen Johanssen, Avocat à la Cour suprême de Norvège,

et le Gouvernement de la Suède : Monsieur C. O. Montan, ancien Membre de la Cour d'appel de Svea, Juge au Tribunal mixte d'Alexandrie ;

ARBITRAL AWARD RENDERED OCTOBER 23, 1909, IN THE QUESTION
OF THE DELIMITATION OF A CERTAIN PART OF THE MARITIME FRONTIER
BETWEEN NORWAY AND SWEDEN

Whereas, by a convention of March 14, 1908, Norway and Sweden agreed to submit to the definite decision of an arbitral court, composed of a president who should neither be a subject of either contracting party nor domiciled in either country, and of two other members, of whom one should be Norwegian and the other Swedish, the question of the maritime frontier between Norway and Sweden, in so far as that frontier was not determined by the Royal Resolution of March 15, 1904;

Whereas, in carrying out this convention, the two governments have chosen respectively as president and arbitrators:

Mr. J. A. Loeff, Doctor of Laws and Political Science, ex-Minister of Justice, member of the Second Chamber of the States-General of The Netherlands;

Mr. F. V. N. Beichmann, President of the Court of Appeal, Trondhjem, and

Mr. K. Hj. L. de Hammarskjöld, Doctor of Laws, ex-Minister of Justice, ex-Minister of Worship and public Instruction, ex-Envoy extraordinary and Minister plenipotentiary to Copenhagen, ex-President of the Court of Appeal, Jönköping, ex-Professor in the Faculty of Law, Upsala, Governor of the Province of Upsala, Member of the Permanent Court of Arbitration;

Whereas, conformably to the provisions of the Convention, the case, counter-case and replies have been duly exchanged between the parties and transmitted to the Arbitrators within the period fixed by the president of the tribunal;

As the two Governments have respectively designated as agents the Government of Norway: Mr. Kristen Johanssen, advocate before the Supreme Court of Norway,

the Government of Sweden: Mr. C. O. Montan, ex-Minister of the Court of Appeal, Svea, Judge of the mixed Court, Alexandria;

Considérant qu'il a été convenu, par l'article II de la Convention :

1°. que le Tribunal arbitral déterminera la ligne frontière dans les eaux à partir du point indiqué sous XVIII sur la carte annexée au projet des Commissaires norvégiens et suédois du 18 août 1897, dans la mer jusqu'à la limite des eaux territoriales ;

2°. que les lignes limitant la zone, qui peut être l'objet du litige par suite des conclusions des Parties et dans laquelle la ligne frontière sera par conséquent établie, ne doivent pas être tracées de façon à comprendre ni des îles, ni des îlots, ni des récifs, qui ne sont pas constamment sous l'eau ;

Considérant qu'il a été également convenu, par l'article III de ladite Convention :

1°. que le Tribunal arbitral aura à décider si la ligne frontière doit être considérée, soit entièrement soit en partie, comme fixée par le Traité de délimitation de 1661 avec la carte y annexée et de quelle manière la ligne ainsi établie doit être tracée ;

2°. que, pour autant que la ligne frontière ne sera pas considérée comme fixée par ce traité et cette carte, le Tribunal aura à fixer cette ligne frontière en tenant compte des circonstances de fait et des principes du droit international ;

Considérant que les Agents des Parties ont présenté au Tribunal les Conclusions suivantes (*conclusions traduites*),

l'Agent du Gouvernement Norvégien :

que la frontière entre la Norvège et la Suède, dans la zone qui forme l'objet de la décision arbitrale, soit déterminée en conformité avec la ligne indiquée sur la carte, annexée sous numero 35 au Mémoire présenté au nom du Gouvernement Norvégien ;

et l'Agent du Gouvernement Suédois :

I. en ce qui concerne la question préliminaire :

Plaise au Tribunal arbitral de déclarer, que la ligne de frontière litigieuse, quant à l'espace entre le point XVIII déjà fixé sur la carte des Commissaires de l'année 1897 et le point A sur la carte du Traité de frontière de l'année 1661, n'est établie qu'incomplètement par ledit traité et la carte du traité, en tant que la situation exacte de ce point-ci n'en ressort pas clairement, et, en ce qui regarde le

Whereas it was agreed by Article II of the Convention :

1. that the court of arbitration shall determine the boundary line in the waters starting from the point indicated as XVIII on the map annexed to the plan of the Norwegian and Swedish Commissioners, August 18, 1897, in the sea to the limit of territorial waters ;

2. that the line bounding the zone, which may be the subject of litigation in consequence of the claims of the parties and within which the boundary line will therefore be established, should not be drawn so as to include islands, islets, or reefs which are not always under water ;

Whereas, it was also agreed in article III of the said Convention :

1. that the court of arbitration shall decide whether the boundary line should be considered either wholly or in part as fixed in the boundary treaty of 1661 with the map annexed thereto and in what manner the line thus established should be drawn ;

2. that so far as the boundary line shall not be considered as fixed by that treaty and map, the court shall fix the boundary line having regard to the circumstances of fact and to the principles of international law ;

Whereas the agents of the parties have presented to the court the following conclusions,

the agent of the Norwegian Government :

that the boundary between Norway and Sweden, in the zone which is the subject of the arbitral award may be determined in conformity with the line indicated on the map, annexed as number 35 to the case presented in the name of the government of Norway ;

and the agent of the Swedish Government :

I. as to that which concerns the preliminary question :

may it please the court to declare, that the line of the disputed boundary, as regards the space between point XVIII already fixed upon the map of the commissioners of the year 1897 and point A on the map of the treaty of 1661, was not completely established by said treaty and by the map of the treaty, as the exact location of the point itself was not there clearly set forth, and, as regards

reste de l'espace, s'étendant vers l'ouest à partir du même point A jusqu'à la limite territoriale, que la ligne de frontière n'a pas du tout été établie par ces documents ;

II. en ce qui concerne la question principale :

1. Plaise au Tribunal de vouloir bien, en se laissant diriger par le Traité et la carte de l'année 1661, et en tenant compte des circonstances de fait et des principes du droit des gens, déterminer la ligne de frontière maritime litigieuse entre la Suède et la Norvège à partir du point XVIII, déjà fixé, de telle façon, que d'abord la ligne de frontière soit tracée en ligne droite jusqu'à un point qui forme le point de milieu d'une ligne droite, reliant le récif le plus septentrional des Röskären, faisant partie des îles de Koster, c'est-à-dire celui indiqué sur la table 5 du Rapport de l'année 1906 comme entouré des chiffres de profondeur 9, 10 et 10, et le récif qui est le plus méridional des Svartskjär, faisant partie des îles de Tisler, et qui est muni d'une balise, point indiqué sur la même table 5 comme point XIX ;

2. Plaise au Tribunal de vouloir bien en outre, en tenant compte des circonstances de fait et des principes du droit des gens, établir le reste de la frontière litigieuse de telle façon, que

a. à partir du point fixé selon les conclusions sub 1 et désigné comme point XIX, la ligne de frontière soit tracée en ligne droite jusqu'à un point situé au milieu d'une ligne droite, reliant le récif le plus septentrional des récifs indiqués par le nom Stora Drammen, du côté suédois, et le rocher Hejeknub situé au sud-est de l'île Heja, du côté norvégien, point indiqué sur ladite table 5 comme point XX, et

b. à partir du point nommé en dernier lieu, la frontière soit tracée en ligne droite vers le vrai ouest aussi loin dans la mer que les territoires maritimes des deux Etats sont censés s'étendre ;

Considérant que la ligne mentionnée dans les conclusions de l'Agent Norvégien est tracée comme suit :

the remainder of the space, extending toward the west starting from point A itself even to the territorial limit, that the boundary line has not in any respect been established by these documents ;

II. as to that which concerns the principal question :

1. May it please the court to be willing in being guided by the treaty and map of the year 1661 and in considering circumstances of fact and the principles of the law of nations, to decide that the line of the disputed maritime frontier between Norway and Sweden starts from point XVIII, already fixed, so that at first the boundary line may be drawn in a straight line to a point which is the point at the middle of a straight line, uniting the most northern reef of Rösökären, constituting a part of the Koster islands, that is to say, that indicated on table 5 of the report of the year 1906 as showing soundings 9, 10 and 10, and the reef which is the most southern of Svartskjär, constituting a part of the islands of Tisler, and which is supplied with a beacon, a point indicated on the same table 5 as point XIX ;

2. May it please the court to be disposed moreover, in considering circumstances of fact and the principles of the law of nations, to establish the remainder of the disputed boundary in such fashion, that

a. starting from the point fixed according to the conclusions under 1 and designated as point XIX, the boundary line may be drawn in a straight line to a point located at the middle of a straight line, uniting the most northern of the reefs indicated by the name Stora Drammen, off the Swedish coast, and the rock Hejeknub situated to the southeast of the island Heja, off the Norwegian coast, a point indicated on the said table 5 as point XX, and

b. starting from the point last mentioned, the boundary may be drawn in a straight line toward the true west as far out to sea as the maritime jurisdiction of the two states is considered to extend ;

Whereas the line mentioned in the conclusions of the Norwegian agent is drawn as follows :

du point XVIII indiqué sur la carte des Commissaires de 1897 en ligne droite jusqu'à un point XIX situé au milieu d'une ligne tirée entre le récif le plus méridional des Svartskjär — celui qui est muni d'une balise — et le récif le plus septentrional des Röskären,

de ce point XIX en ligne droite jusqu'à un point XX situé au milieu d'une ligne tirée entre le récif le plus méridional des Heiefluer (söndre Heieflu) et le récif le plus septentrional des récifs compris sous la dénomination de Stora Drammen,

de ce point XX jusqu'à un point XXa en suivant la perpendiculaire tirée au milieu de la ligne nommée en dernier lieu,

de ce point XXa jusqu'à un point XXb en suivant la perpendiculaire tirée au milieu d'une ligne reliant ledit récif le plus méridional des Heiefluer au récif le plus méridional des récifs compris sous la dénomination de Stora Drammen,

de ce point XXb jusqu'à un point XXc en suivant la perpendiculaire tirée au milieu d'une ligne reliant le söndre Heieflu au petit récif situé au Nord de l'îlot Klöfningen près de Mörholmen,

de ce point XXc jusqu'à un point XXd en suivant la perpendiculaire tirée au milieu d'une ligne reliant le midtre Heieflu au dit récif au Nord de l'îlot Klöfningen,

de ce point XXd en suivant la perpendiculaire tirée au milieu de la ligne reliant le midtre Heieflu à un petit récif situé à l'Ouest du dit Klöfningen jusqu'à un point XXI où se croisent les cercles tirés avec un rayon de 4 milles marins (à 60 au degré) autour des dits récifs,

Considérant, qu'après que le Tribunal eut visité la zone litigieuse, examiné les documents et les cartes qui lui ont été présentés, et entendu les plaidoyers et les répliques ainsi que les explications qui lui ont été fournies sur sa demande, les débats ont été déclarés clos dans la séance du 18 octobre 1909;

Considérant, en ce qui concerne l'interprétation de certaines expressions dont s'est servi la Convention et sur lesquelles les deux Parties, au cours des débats, ont émis des opinions différentes,

Que — en premier lieu — le Tribunal est d'avis, que la clause d'après laquelle il déterminera la ligne frontière dans la mer *jusq'à la limite des eaux territoriales* n'a d'autre but que d'exclure l'éven-

from point XVIII indicated upon the map of the commissioners of 1897 in a straight line to a point XIX located at the middle of a line drawn between the most southern reef of Svartskjär — that which is supplied with a beacon — and the most northern reef Röskären,

from this point XIX in a straight line to a point XX located at the middle of a line drawn between the most southern reef of Heiefleur (söndre Heiefleu) and the most northern reef included under the name of Stora Drammen,

from this point XX to a point XXa following a perpendicular drawn from the middle of the line last mentioned,

from this point XXa to a point XXb following the perpendicular drawn from the middle of a line uniting the said most southern of Heiefleur to the most southern of the reefs included under the name of Stora Drammen,

from this point XXb to a point XXc following the perpendicular drawn from the middle of a line uniting the söndre Heiefleu to the little reef situated to the north of the island Klöfningen near Mörholmen,

from this point XXc to a point XXd following the perpendicular drawn from the midtre Heiefleu to said reef to the north of the island Klöfningen,

from this point XXd following a perpendicular drawn from the line uniting Heiefleu to a little reef situated to the west of said Klöfningen to a point XXI where the circles cross drawn with a radius of four marine miles (60 to a degree) around said reefs,

Whereas, after the court had visited the area subject of dispute, examined the documents and maps which have been presented to it, and listened to the pleadings and the replies as well as the explanations which have been furnished to it on its request, the arguments were declared closed at the session of October 18, 1909;

Whereas, as to the matter of interpretation of certain expressions of which the convention made use and upon which the two parties, in the course of the arguments, expressed different opinions,

As — in the first place — the court is of the opinion, that the clause according to which it shall determine the boundary line in the sea *to the limit of the territorial waters* has no other object than

tualité d'une détermination incomplète, qui, dans l'avenir, pourrait être cause d'un nouveau litige de frontière ;

que, de toute évidence, il a été absolument étranger aux intentions des Parties de fixer d'avance le point final de la frontière, de sorte que le Tribunal n'aurait qu'à déterminer la direction entre deux points donnés ;

Que — en second lieu — la clause, d'après laquelle les lignes, limitant la zone, qui peut être l'objet du litige par suite des conclusions des Parties, *ne doivent pas être tracées de façon à comprendre, ni des îles, ni des îlots, ni des récifs, qui ne sont pas constamment sous l'eau* ne saurait être interprétée de manière à impliquer, que les îles, îlots et récifs susindiqués devraient être pris nécessairement comme points de départ pour la détermination de la frontière ;

Considérant donc que, sous les deux rapports susmentionnés, le Tribunal conserve toute sa liberté de statuer sur la frontière dans les bornes des prétentions respectives ;

Considérant, que d'après les termes de la Convention, la tâche du Tribunal consiste à déterminer la ligne frontière dans les eaux à partir du point indiqué sous XVIII, sur la carte annexée au projet des Commissaires Norvégiens et Suédois du 18 août 1897, dans la mer, jusqu'à la limite des eaux territoriales ;

Considérant, quant à la question „si la ligne frontière doit être considérée, soit entièrement soit en partie, comme fixée par le Traité de délimitation de 1661 avec la carte y annexée,”

que la réponse à cette question doit être négative, du moins en ce qui concerne la ligne frontière au delà du point A sur la carte susindiquée ;

Considérant que la situation exacte, que le point A occupe sur cette carte ne peut être précisée d'une manière absolue, mais que, en tout cas, il correspond à un point situé entre le point XIX et le point XX, comme ces deux points seront fixés ci-après ;

Considérant que les Parties en litige sont d'accord en ce qui concerne la ligne frontière du point indiqué sous XVIII sur la carte du 18 août 1897 jusqu'au point indiqué sous XIX dans les conclusions suédoises ;

Considérant que, en ce qui concerne la ligne frontière du dit point XIX jusqu'à un point indiqué sous XX sur des cartes annexées

to exclude the possibility of an incomplete determination, which in the future, might be the source of a new dispute as to the boundary;

As, from the evidence, it has been entirely outside the intention of the parties to fix in advance the last point of the boundary, in such manner that the tribunal would have only to determine the direction between two given points;

As, — in the second place — the clause, according to which the lines, limiting the zone, which may be the subject of litigation in consequence of the conclusions of the parties, *should not be drawn so as to include islands, islets, or reefs, which are not always under water* should not be interpreted in a manner to imply that the islands, islets, and reefs above indicated ought necessarily to be taken as points of departure for the determination of the boundary;

Whereas then as under the two agreements above mentioned, the court retains complete freedom to determine upon the boundary within the limits of the respective pretensions;

Whereas, as according to the terms of the convention, the task of the court consists in determining the boundary line in the waters starting from the point indicated as XVIII on the map annexed to the projet of the Norwegian and Swedish commissioners, of August 18, 1897, in the sea, to the limit of territorial waters;

Whereas, as to the question “whether the line of the frontier, should be considered either wholly or in part, as fixed in the boundary treaty of 1661 with the map thereto annexed,”

as the reply to the question ought to be negative, at least as regards the boundary line outside the point A on the map above mentioned;

Whereas as the exact situation which the point A occupies upon that map cannot be determined with absolute precision, but as, in any case, it corresponds to a point situated between the point XIX and the point XX, as these two points shall be fixed hereafter;

Whereas as the parties to the case are in accord as regards the boundary line from the point indicated as XVIII on the map of August 18, 1897 as far as the point indicated as XIX in the Swedish conclusions;

Whereas, as regards the boundary line from said point XIX to a point indicated as XX on the maps annexed to the cases, the

aux mémoires, les Parties sont également d'accord, sauf la seule différence dépendant de la question de savoir si, pour déterminer le point XX, il faut prendre les Heiefluer ou bien le Heieknub comme point de départ du côté norvégien ;

Considérant, à ce sujet,

que les Parties ont adopté, en pratique du moins, le principe du partage par la ligne médiane, tirée entre les îles, îlots et récifs, situés des deux côtés et n'étant pas constamment submergés, comme ayant été, à leur avis, le principe qui avait été appliqué en deçà du point A, par le Traité de 1661 ;

qu'une adoption de principe inspirée par de pareils motifs — abstraction faite de la question, si le principe invoqué a été réellement appliqué par ledit traité — doit avoir pour conséquence logique que, en l'appliquant de nos jours, on tienne compte en même temps des circonstances de fait ayant existé à l'époque du traité ;

Considérant que les Heiefluer sont des récifs dont, à un degré suffisant de certitude, on peut prétendre que, au temps du traité de délimitation de 1661, ils n'émergeaient pas de l'eau,

que, par conséquent, à cette époque là ils n'auraient pu servir comme point de départ pour une délimitation de frontière ;

Considérant donc que, au point de vue mentionné plus haut, le Heieknub doit être préféré aux Heiefluer ;

Considérant que le point XX étant fixé, il reste à déterminer la ligne frontière à partir de ce point XX jusqu'à la limite des eaux territoriales ;

Considérant que le point XX est situé, sans aucun doute, au delà du point A, indiqué sur la carte annexée au Traité de délimitation de 1661 ;

Considérant que la Norvège a soutenu la thèse, qui du reste n'a pas été rejetée par la Suède, que par le seul fait de la paix de Roskilde en 1658 le territoire maritime dont il s'agit a été partagé automatiquement entre Elle et la Suède ;

Considérant que le Tribunal se rallie complètement à cette opinion ;

Considérant que cette opinion est conforme aux principes fondamentaux du droit des gens, tant ancien que moderne, d'après lesquels le territoire maritime est une dépendance nécessaire d'un

parties are similarly in accord, save for the single difference depending upon the question whether, for determining the point XX, it is necessary to take the Heiefleur or the Hejeknub as point of departure from the Norwegian coast ;

Whereas, on that subject,

As the parties have adopted, in practice at least, the principle of division by the middle line, drawn between islands, islets, and reefs, situated on the two sides and not being always submerged, as having been, according to their opinion, the principle which had been applied on this side of point A, by the treaty of 1661 ;

As an adoption of a principle based on similar reasons — putting aside the question, whether the principle relied upon has been applied actually by said treaty — ought to have as logical consequence that, in applying it in our times, one should take account at the same time of the circumstances in fact existing at the time of the treaty.

Whereas, as the Heiefleur are reefs of which, with a sufficient degree of certainty, one cannot assume, at the time of the delimitation of 1661, that they had emerged from the water,

As, consequently, at that epoch they could not have served as a point of departure for a delimitation of frontier ;

Whereas, then as, from the point of view mentioned above, the Hejeknub ought to be preferred to Heiefleur ;

Whereas, as the point XX being fixed, it remains to determine the boundary line starting from that point XX to the limit of the territorial waters ;

Whereas as the point XX is situated, without any doubt, outside of point A, indicated on the map annexed to the boundary treaty of 1661 ;

Whereas as Norway has maintained the position, which besides has not been rejected by Sweden, that by the single fact of the peace of Roskilde in 1658 the maritime area with which it deals has been partitioned automatically between Norway and Sweden ;

Whereas the court is completely in accord with that opinion ;

Whereas that opinion is in conformity with the fundamental principles of the law of nations, both ancient and modern, according to which maritime territory is a necessary appurtenance of the land

territoire terrestre, ce dont il suit, qu'au moment que, en 1658, le territoire terrestre nommé le Bohuslän fut cédé à la Suède, le rayon de territoire maritime formant la dépendance inséparable de ce territoire terrestre dut faire automatiquement partie de cette cession ;

Considérant que de ce raisonnement il résulte, que, pour constater quelle peut avoir été la ligne automatique de division de 1658, il faut avoir recours aux principes de droit en vigueur à cette époque ;

Considérant que la Norvège prétend, que, en deçà de la ligne Koster-Tisler le principe des documents de frontière de 1661 ayant été que la frontière devrait suivre la ligne médiane entre les îles, îlots et récifs des deux côtés, le même principe doit être appliqué quant à la frontière au delà de cette ligne ;

Considérant qu'il n'est pas établi, que la ligne de frontière déterminée par le traité et tracée sur la carte de délimitation ait été basée sur ce principe ;

qu'il y a des détails et des particularités dans la ligne suivie, qui font même surgir des doutes sérieux à ce sujet ;

que, même si l'on admettait pour la ligne de frontière déterminée par le traité, l'existence de ce principe, il ne s'ensuivrait pas que le même principe aurait du être appliqué pour la détermination de la frontière dans le territoire extérieur ;

Considérant, à ce sujet,

que le Traité de délimitation de 1661 et la carte de ce traité font *commencer* la ligne de frontière entre les îles de Koster et de Tisler ;

que, en déterminant la ligne de frontière, on est allé dans la direction de la mer vers la côte et non de la côte vers la mer ;

que l'on ne saurait donc même parler d'une continuation possible de cette ligne de frontière dans la direction vers le large ;

que, par conséquent, le trait-d'union manque pour pouvoir présumer, sans preuve décisive, l'application simultanée du même principe aux territoires situés en deçà et à ceux situés au delà de la ligne Koster-Tisler ;

Considérant en outre,

que ni le traité de délimitation, ni la carte y appartenant ne font

territory, from which it follows that at the moment that in 1658, the land territory called Bohuslän was ceded to Sweden, the area of maritime territory forming the inseparable appurtenance of the land territory should automatically make a part of that cession ;

Whereas, as from this reasoning it results, that, to ascertain what may have automatically been the line of division of 1658, it is necessary to have recourse to the principles of law in operation at that epoch ;

Whereas, as Norway claims that on this side of the line Koster-Tisler the principle of the titles of boundary of 1661 having been that the boundary should follow the middle line between the islands, islets, and reefs of the two coasts, the same principle ought to be applied to the boundary outside of that line ;

Whereas, as it is not established that the boundary line determined by the treaty and traced on the delimitation map has been based on this principle ;

as there are details and peculiarities in the line followed, which give rise to serious doubts on this subject ;

as, even if one should admit for the boundary line determined by the treaty, the existence of that principle, it would not follow that the same principle should have been applied for the determination of the boundary of the area outside ;

Whereas, as to that subject

as the treaty of delimitation of 1661 and the map of that treaty make the boundary line commence between the islands of Koster and Tisler ;

as, in determining the boundary line, the direction followed was from the sea toward the coast and not from the coast toward the sea ;

as one should not speak of a possible continuation of the boundary line in the direction toward the offing ;

as, in consequence, there is wanting the connecting link for presuming, without positive proof, the application at the same time of the same principle to areas situated within and to those situated without the line Koster-Tisler ;

Whereas, moreover,

as neither the treaty of delimitation, nor the map belonging to

mention d'îles, îlots ou récifs situés au delà de la ligne Koster-Tisler ;

que donc, pour rester dans les intentions probables de ces documents, il faut faire abstraction de tels îles, îlots et récifs ;

Considérant en plus,

que le territoire maritime, correspondant à une zone d'une certaine largeur, présente de nombreuses particularités qui le distinguent du territoire terrestre et des espaces maritimes plus ou moins complètement environnés de ces territoires ;

Considérant au même sujet encore,

que les règles sur le territoire maritime ne sauraient servir de directives pour la détermination de la frontière entre deux pays limitrophes, d'autant moins qu'il s'agit dans l'espèce de la détermination d'une frontière, qui doit s'être automatiquement tracée en 1658, tandis que les règles invoquées datent de siècles postérieurs ;

qu'il en est de même pour les règles du droit interne Norvégien, concernant la délimitation soit entre les propriétés privées, soit entre les unités administratives ;

Considérant que, par tous ces motifs, on ne saurait adopter la méthode d'après laquelle la Norvège a proposé de déterminer la frontière du point XX jusqu'à la limite territoriale ;

Considérant que le principe d'une ligne médiane à tirer au milieu des terres habitées ne trouve pas d'appui suffisant dans le droit des gens en vigueur au XVII^e siècle ;

Considérant qu'il en est de même pour le principe du thalweg ou du chenal le plus important, principe dont l'application à l'espèce ne se trouve pas non plus établie par les documents invoqués à cet effet ;

Considérant que l'on est bien plus en concordance avec les idées du XVII^e siècle et avec les notions de droit en vigueur à cette époque en admettant que la division automatique du territoire en question a du s'effectuer d'après la direction générale du territoire terrestre duquel le territoire maritime formait une appartenance et, en appliquant par conséquent, pour arriver à une détermination légitime et justifiée de la frontière, de nos jours ce même principe ;

Considérant que, par suite, la ligne automatique de partage de 1658 doit être déterminée, ou — ce qui en d'autres termes est

the same make mention of islands, islets, or reefs situated beyond the line Koster-Tisler ;

as then, to remain within the probable intentions of these documents, it is necessary to set aside such islands, islets, and reefs ;

Whereas, further,

as the maritime area, corresponding to a zone of a certain width, offers numerous peculiarities which distinguish it from land territory and from bodies of water more or less completely surrounded by these territories ;

Whereas, as to the same subject still,

as the rules regarding maritime area can not serve as obligatory for the determination of the boundary line between two neighboring countries, the less would these apply to the case of the determination of a frontier, which should have been automatically drawn in 1658, while the rules cited date from subsequent times ;

as it is the same in regard to the rules of Norwegian local law, concerning the boundary either between private properties, or between administrative unities ;

Whereas, from all these reasons, one can not adopt the method by which Norway has proposed to determine the boundary from point XX to the territorial limit ;

Whereas, as the principle of a median line to the middle of the inhabited land did not find sufficient support in the law of nations in vigor in the 17th century ;

Whereas as it is the same as regards the principle of the thalweg or of the most important channel, a principle of which the application to the case is not any more established by the documents cited for that purpose ;

Whereas, as it is moreover much more in accord with the ideas of the 17th century and with the notions of law prevalent at that epoch to admit that the automatic division of the territory in question ought to have been made according to the general direction of the land territory of which the maritime area forms an appurtenance, and consequently to apply, in order to reach a lawful and just determination of the boundary, the same principle in our day ;

Whereas, as consequently, the line of automatic partition of 1658 ought to be determined, or — what in other words is exactly

exactement la même chose — le partage d'aujourd'hui doit être fait en traçant une ligne perpendiculairement à la direction générale de la côte, tout en tenant compte de la nécessité d'indiquer la frontière d'une manière claire et indubitable et d'en faciliter, autant que possible, l'observation de la part des intéressés ;

Considérant que, pour savoir quelle est cette direction, il faut, d'une manière égale, tenir compte de la direction de la côte située des deux côtés de la frontière ;

Considérant que la direction générale de la côte, d'après l'expertise consciencieuse du Tribunal, décline du vrai Nord d'environ 20 degrés vers l'Ouest ;

que, par conséquent, la ligne perpendiculaire doit se diriger vers l'Ouest, à environ 20 degrés au Sud ;

Considérant que les Parties sont d'accord à reconnaître le grand inconvénient qu'il y aurait à tracer la ligne frontière à travers des bancs importants ;

qu'une ligne de frontière, tracée du point XX dans la direction de l'Ouest, à 19 degrés au Sud, éviterait complètement cet inconvénient puisqu'elle passerait juste au Nord des Grisbådarna et au Sud des Skjöttegrunde et qu'elle ne couperait non plus aucun autre banc important ;

que, par conséquent, la ligne frontière doit être tracée du point XX dans la direction de l'Ouest, à 19 degrés au Sud, de manière qu'elle passe au milieu des bancs Grisbådarna d'un côté et des bancs Skjöttegrunde de l'autre ;

Considérant que, bien que les Parties n'aient pas indiqué de marques d'alignement pour une ligne de frontière ainsi tracée, il y a lieu de croire que ce ne soit pas impossible d'en trouver ;

Considérant d'autre part que, le cas échéant, on pourrait avoir recours à d'autres méthodes connues de marquer la frontière ;

Considérant qu'une démarcation qui attribue les Grisbådarna à la Suède se trouve appuyée par l'ensemble de plusieurs circonstances de fait, qui ont été relevées aux cours des débats, et dont les principales sont les suivantes :

a. la circonstance que la pêche aux homards aux bas-fonds de Grisbådarna a été exercée depuis un temps bien plus reculé, dans une bien plus large mesure et avec un

the same thing — the partition of to-day ought to be made by drawing a line perpendicular to the general direction of the coast, taking careful account of the need of indicating the boundary in a clear and unequivocal manner, and of making easy, so far as possible, the respect for the interests of those concerned ;

Whereas as, in order to ascertain what this direction is, it is necessary, in like manner, to take account of the direction of the coast situated on both sides of the boundary ;

Whereas, as the general direction of the coast, according to the careful survey of the tribunal, inclines from the true north by about 20 degrees toward the west,

as, consequently, the perpendicular line ought to run toward the west, at about 20 degrees south ;

Whereas, as the parties are in accord in recognizing the great inconvenience there would be in drawing the boundary line across the important banks,

as a boundary line, drawn from point XX in a westerly direction, 19 degrees south, would altogether avoid that inconvenience since it would pass just north of the Grisbadarna and to the south of the Skjöttegrunde and as it would not cross any other important bank,

as, consequently, the boundary line ought to be drawn from point XX in a westerly direction, 19 degrees south, in such manner as to pass midway between the banks of Grisbadarna on one side, and the banks of Skjöttegrunde on the other ;

Whereas as, although the parties have not indicated by marks the lay out for a boundary line thus drawn, there is reason to believe that it would not be impossible to find these ;

Whereas on the other hand as, if the case should arise, recourse could be had to other methods of marking the boundary,

Whereas as a demarcation which assigns the Grisbadarna to Sweden is supported by the agreement of many circumstances of fact, which have been disclosed in the course of the arguments, and of which the main are the following :

- a. the fact that the fishery for lobsters in the shoals of Grisbadarna has been carried on since a time much more remote, in a much more extended measure and by a much

bien plus grand nombre de pêcheurs par les ressortissants de la Suède que par ceux de la Norvège ;

b. la circonstance que la Suède a effectué dans les parages de Grisbådarna, surtout dans les derniers temps, des actes multiples émanés de sa conviction que ces parages étaient suédois, comme, par exemple, le balisage, le mesurage de la mer et l'installation d'un bateau-phare, lesqueles actes entraînaient des frais considérables et par lesquels elle ne croyait pas seulement exercer un droit mais bien plus encore accomplir un devoir ; tandis que la Norvège, de son propre aveu, sous ces divers rapports s'est soucié bien moins ou presque pas du tout de ces parages ;

Considérant, en ce qui concerne la circonstance de fait mentionnée sous *a*,

que, dans le droit des gens, c'est un principe bien établi, qu'il faut s'abstenir autant que possible de modifier l'état des choses existant de fait et depuis longtemps ;

que ce principe trouve une application toute particulière lorsqu'il s'agit d'intérêts privés, qui, une fois mis en souffrance, ne sauraient être sauvegardés d'une manière efficace même par des sacrifices quelconques de l'Etat, auquel appartiennent les intéressés ;

que c'est la pêche aux homards, qui, aux bancs de Grisbådarna, est de beaucoup la plus importante et que c'est surtout cette pêche qui donne aux bancs leur valeur, comme place de pêche ;

que, sans conteste, les Suédois ont été les premiers à pêcher aux homards à l'aide des engins et des embarcations nécessaires pour l'exercice de la pêche aussi loin dans la mer que sont situés les bancs en question ;

que la pêche en général a plus d'importance pour les habitants de Koster que pour ceux de Hvaler et que, au moins jusqu'à un temps assez peu reculé, ceux-ci se sont adonnés plutôt à la navigation qu'à la pêche ;

que de ces diverses circonstances il ressort déjà avec une probabilité équivalente à un haut degré de certitude, que les Suédois ont, beaucoup plus tôt et d'une manière beaucoup plus efficace que les Norvégiens, exploité les bancs en question ;

greater number of fishermen on the part of the inhabitants of Sweden than on the part of those of Norway,

b. the fact that Sweden has performed in the region of Grisbadarna, particularly in recent times, many acts based on the belief that these regions were Swedish, as, for example, the placing of beacons, the survey of the sea and the locating of a lightship, which acts involved considerable expense and by which she did not think merely to exercise a right but even more still, to perform a duty; while Norway, by her own confession in these several respects has been much less or almost not at all concerned as to these regions;

Whereas, in what relates to the circumstance of fact mentioned under *a*,

as, in the law of nations, it is a well established principle that it is necessary to refrain as far as possible from modifying the state of things existing in fact and for a long time;

as that principle has a very particular application when private interests are in question, which, once disregarded, can not be preserved in an effective manner even by any sacrifices of the state, to which those interested belong;

as this fishery for lobsters, which, on the banks of Grisbadarna, is by far the most important and as this is above all the fishery which gives to the banks their value as a place for fishing;

as, undoubtedly, the Swedes have been the first to fish for lobsters by the aid of tackle and of craft essential for carrying on the fishery as far out at sea as the banks in question are situated;

as that fishery in general has more importance for the inhabitants of Koster than for those of Hvaler and as, at least until a time somewhat remote, these have devoted themselves rather to navigation than to fishing;

as from different circumstances it appears already with a probability equivalent to a high degree of certainty, that the Swedes, much sooner and in a much more effective fashion than the Norwegians, have exploited the banks in question;

que les dépositions et les déclarations des témoins sont en général en pleine concordance avec cette conclusion ;

que, également, la Convention d'arbitrage est en pleine concordance avec la même conclusion ;

que, d'après cette convention, il existe une certaine connexité entre la jouissance de la pêche des Grisbådarna et l'entretien du bateau-phare et que, la Suède étant obligée d'entretenir le bateau-phare aussi longtemps que continuera l'état actuel, cela démontre que, d'après les raisons de cette clause, la jouissance principale en revient aujourd'hui à la Suède ;

Considérant, en ce qui concerne les circonstances de fait, mentionnés sous b,

Quant au balisage et au stationnement d'un bateau-phare,

que le stationnement d'un bateau-phare, nécessaire à la sécurité de la navigation dans les parages de Grisbådarna, a été effectué par la Suède sans rencontrer de protestation et sur l'initiative même de la Norvège et que, également, l'établissement d'un assez grand nombre de balises y a été opéré sans soulever des protestations ;

que ce bateau-phare et ces balises sont maintenus toujours par les soins et aux frais de la Suède ;

que la Norvège n'a pris de mesures en quelque manière correspondantes qu'en y plaçant à une époque postérieure au balisage et pour un court laps de temps une bouée sonore, dont les frais d'établissement et d'entretien ne pourraient même être comparés à ceux du balisage et du bateau-phare ;

que de ce qui précède ressort que la Suède n'a pas douté de son droit aux Grisbådarna et qu'Elle n'a pas hésité d'encourir les frais incombant au propriétaire et possesseur de ces bancs jusque même à un montant très-considérable ;

Quant aux mesurages de mer,

que la Suède a procédé la première et une trentaine d'années avant le commencement de toute contestation, à des mesurages exacts, laborieux et coûteux des parages de Grisbådarna, tandis que les mesurages faits quelques années plus tard par les soins de la Norvège n'ont même pas atteint les limites des mesurages Suédois ;

Considérant donc qu'il n'est pas douteux du tout que l'attribution des bancs de Grisbådarna à la Suède est en parfaite concordance avec les circonstances les plus importantes de fait ;

as the depositions and the declarations of witnesses are in general in full accord with this conclusion ;

as, likewise, the convention of arbitration is in full accord with the same conclusion ;

as, according to that convention, there exists a certain relationship between the enjoyment of the fishery of Grisbadarna and the maintenance of the lightship and as, the Swedish obligation to maintain the lightship as long as the present condition shall continue shows that, according to the reasons of that clause, the chief enjoyment of these reverts to Sweden ;

Whereas, as to that which concerns the circumstances of fact mentioned under *b*,

With regard to placing beacons and the locating of a lightship, as the locating of a lightship, necessary for the safety of navigation in regions of Grisbadarna, has been carried out by Sweden without incurring opposition and even on initiative of Norway, and as, so large a number of beacons have been put in service there without arousing opposition ;

as the lightship and the beacons are maintained always by the care and at the expense of Sweden ;

as Norway has not taken measures in any similar manner save by placing there at a time after the placing of the beacons and for a short period a bell buoy, of which the cost of placing and maintenance could not even be compared to that of the beacons and lightship ;

as from what precedes, it arises that Sweden has no doubt of her right to Grisbadarna, and as she has not hesitated in incurring the cost resting on an owner or possessor of the banks even to a very considerable sum ;

With regard to the surveys of the sea,

as Sweden proceeded first about thirty years before the commencement of any controversy to an exact survey, careful and costly of the regions of Grisbadarna, while the surveys made some years later under the care of Norway have not even reached the limits of the Swedish survey ;

Whereas then it is not at all doubtful that the conferring of the banks of Grisbadarna on Sweden is in absolute accord with the most important circumstances of fact ;

Considérant, qu'une démarcation, qui attribue les Skjöttegrunde — la partie la moins importante du territoire litigieux — à la Norvège se trouve suffisamment appuyée, de son côté, par la circonstance de fait sérieuse que, quoiqu'on doive conclure des divers documents et témoignages, que les pêcheurs Suédois — comme il a été dit plus haut — ont exercé la pêche dans les parages en litige depuis un temps plus reculé, dans une plus large mesure et en plus grand nombre, il est certain d'autre part que les pêcheurs Norvégiens n'y ont été jamais exclus de la pêche;

que, en outre, il est avéré qu'aux Skjöttegrunde, les pêcheurs Norvégiens ont presque de tout temps, et d'une manière relativement bien plus efficace qu'aux Grisbådarna, pris part à la pêche aux homards.

PAR CES MOTIFS

Le Tribunal décide et prononce:

Que la frontière maritime entre la Norvège et la Suède, en tant qu'elle n'a pas été réglée par la Résolution royale du 15 mars 1904 est déterminée comme suit:

du point XVIII, situé comme il est indiqué sur la carte annexée au projet des commissaires Norvégiens et Suédois du 18 août 1897, une ligne droite est tracée au point XIX, formant le point de milieu d'une ligne droite tirée du récif le plus septentrional des Röskären au récif le plus méridional des Svartskjör, celui qui est muni d'une balise,

du point XIX ainsi fixé une ligne droite est tracée au point XX, formant le point de milieu d'une ligne droite tirée du récif le plus septentrional du groupe des récifs Stora Drammen au récif le Hejeknub situé au Sud-est de l'île Heja,

du point XX une ligne droite est tracée dans une direction Ouest, 19 degrés au Sud, laquelle ligne passe au milieu entre les Grisbådarna et le Skjöttegrund Sud et se prolonge dans la même direction jusqu'à ce qu'elle aura atteint la mer libre.

Fait à La Haye, le 23 octobre 1909 dans l'Hôtel de la Cour permanente d'arbitrage.

Le Président : J. A. LOEFF

Le Secrétaire général : MICHIELS VAN VERDUYNEN

Le Secrétaire : RÖELL

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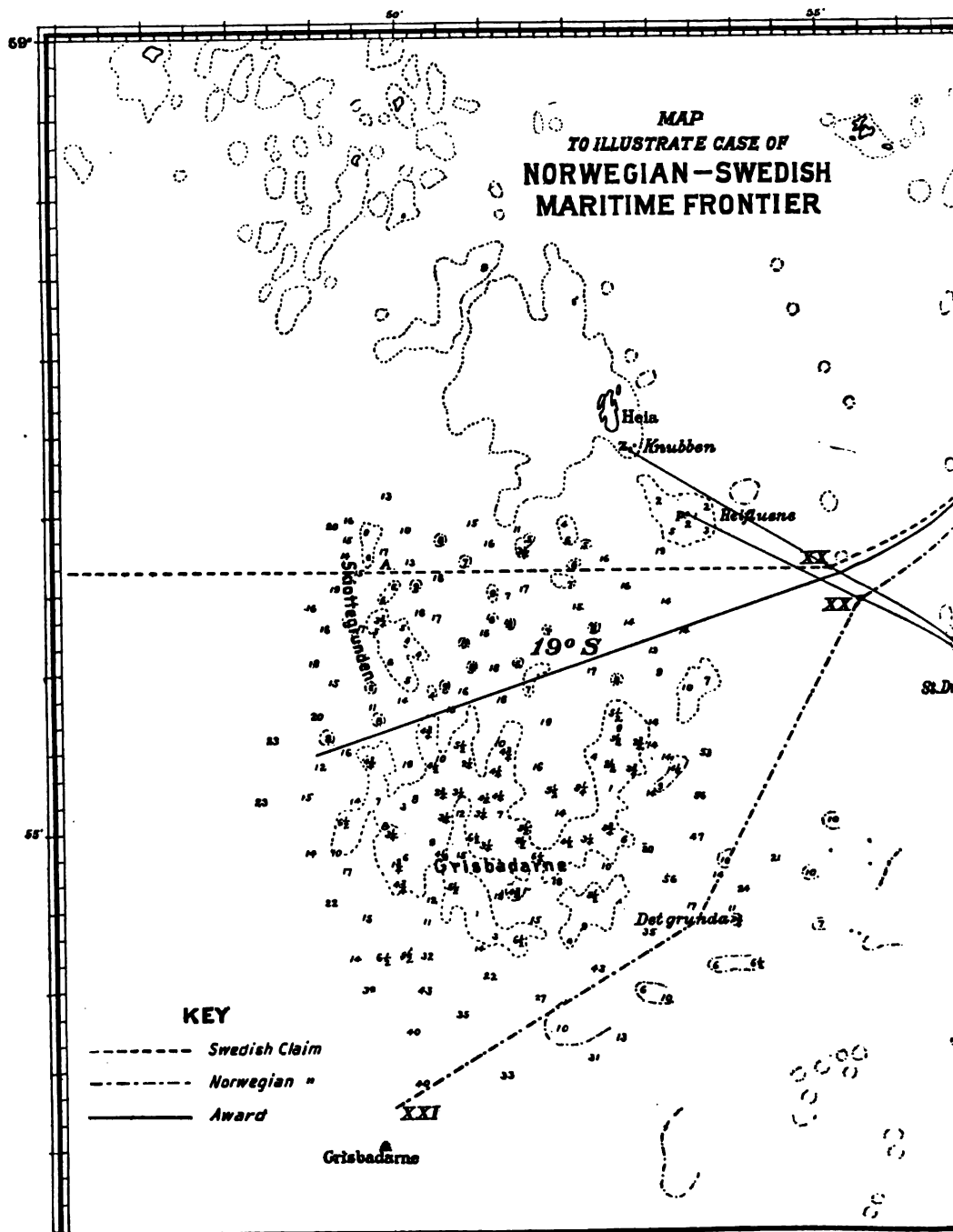
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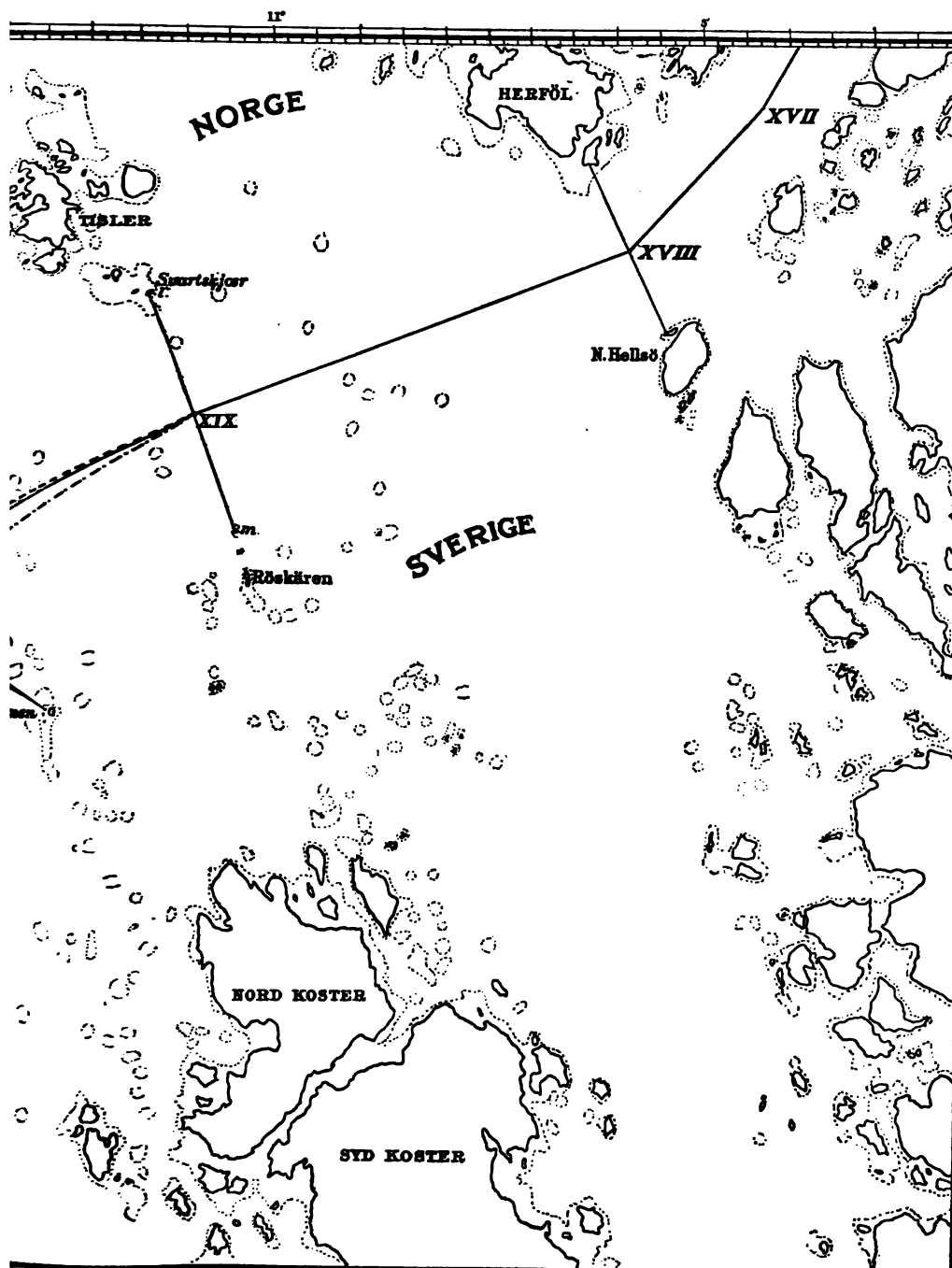
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Whereas, as a demarcation, which confers Skjöttegrunde — the less important part of the disputed territory — upon Norway is sufficiently supported, on one side, by the circumstance of the weighty fact that although one should conclude from different documents and witnesses that the Swedish fishermen — as has been said above — have engaged in fishing in the regions in dispute since a more remote time, in a wider measure and in greater number, it is certain on the other hand that the Norwegian fishermen have never been excluded from the fishing ;

as, moreover, it is shown as to Skjöttegrunde, the Norwegian fishermen have almost all the time, and in a manner relatively much more effectively than in Grisbadarna, engaged in the fishery for lobsters.

FOR THESE REASONS

The Court decides and declares :

That the maritime boundary between Norway and Sweden, in so far as it has not been settled by the royal resolution of March 15, 1904 is determined as follows :

from point XVIII, situated as it is indicated on the map annexed to the project of the Norwegian and Swedish commissioners of August 18, 1897, a straight line is drawn to point XIX, forming the middle point of a straight line drawn from the most northern reef of the Röskären to the most southern reef of the Svartskjær, that which is equipped with a beacon,

from point XIX thus fixed, a straight line is laid out to point XX, forming the middle point of a straight line drawn from the reef the most northern of the group of reefs Stora Drammen to the reef Hejeknub situated to the southeast of the island of Heja,

from point XX a straight line is laid out in a westerly direction 19 degrees south, which line passes midway between the Grisbadarna and the Skjöttegrunde South and continues in the same direction until it reaches the open sea.

Done at The Hague, October 23, 1909 in the Hall of the Permanent Court of Arbitration.

The President: J. A. LOEFF

The Secretary General: MICHIELS VAN VERDUYNEN

The Secretary: RÖELL

VII
UNITED STATES AND GREAT BRITAIN
NORTH ATLANTIC COAST FISHERIES

COMPROMIS, JANUARY 27, 1909.

SESSIONS, JUNE 1, 1910-AUGUST 12, 1910, THE HAGUE

AWARD, SEPTEMBER 7, 1910

ARBITRATORS, LAMMASCH, DE SAVORNIN LOHMAN, GRAY, FITZPATRICK, DRAGO

SPECIAL AGREEMENT FOR THE SUBMISSION OF QUESTIONS RELATING
TO FISHERIES ON THE NORTH ATLANTIC COAST UNDER THE GENERAL
TREATY OF ARBITRATION CONCLUDED BETWEEN THE UNITED
STATES AND GREAT BRITAIN ON THE 4TH DAY OF APRIL, 1908

ARTICLE I

Whereas by Article I of the Convention signed at London on the 20th day of October, 1818, between Great Britain and the United States, it was agreed as follows:—

Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof, to take, dry and cure Fish on Certain Coasts, Bays, Harbours and Creeks of His Britannic Majesty's Dominions in America, it is agreed between the High Contracting Parties, that the inhabitants of the said United States shall have forever, in common with the Subjects of His Britannic Majesty, the Liberty to take Fish of every kind on that part of the Southern Coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the Western and Northern Coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the Coasts, Bays, Harbours, and Creeks from Mount Joly on the Southern Coast of Labrador, to and through the Straits of Belleisle and

thence Northwardly indefinitely along the Coast, without prejudice, however, to any of the exclusive Rights of the Hudson Bay Company; and that the American Fishermen shall also have liberty forever, to dry and cure Fish in any of the unsettled Bays, Harbours and Creeks of the Southern part of the Coast of Newfoundland hereabove described, and of the Coast of Labrador; but so soon as the same, or any Portion thereof, shall be settled, it shall not be lawful for the said Fishermen to dry or cure Fish at such Portion so settled, without previous agreement for such purpose with the Inhabitants, Proprietors, or Possessors of the ground. — And the United States hereby renounce forever, any Liberty heretofore enjoyed or claimed by the Inhabitants thereof, to take, dry, or cure Fish on, or within three marine Miles of any of the Coasts, Bays, Creeks, or Harbours of His Britannic Majesty's Dominions in America not included within the above-mentioned limits provided, however, that the American Fishermen shall be admitted to enter such Bays or Harbours for the purpose of Shelter and of repairing Damages therein, of purchasing Wood, and of obtaining Water, and for no other purpose whatever. But they shall be under such Restrictions as may be necessary to prevent their taking, drying or curing Fish therein, or in any other manner whatever abusing the Privileges hereby reserved to them.

And, whereas, differences have arisen as to the scope and meaning of the said Article, and of the liberties therein referred to, and otherwise in respect of the rights and liberties which the inhabitants of the United States have or claim to have in the waters or on the shores therein referred to:

It is agreed that the following questions shall be submitted for decision to a tribunal of arbitration constituted as hereinafter provided: —

Question 1. — To what extent are the following contentions or either of them justified?

It is contended on the part of Great Britain that the exercise of the liberty to take fish referred to in the said Article, which the inhabitants of the United States have forever in common with the subjects of His Britannic Majesty, is subject, without the consent of the United States, to reasonable regulation by Great Britain,

Canada, or Newfoundland in the form of municipal laws, ordinances, or rules, as, for example, to regulations in respect of (1) the hours, days, or seasons when fish may be taken on the treaty coasts; (2) the method, means, and implements to be used in the taking of fish or in the carrying on of fishing operations on such coasts; (3) any other matters of a similar character relating to fishing; such regulations being reasonable, as being, for instance —

(a) Appropriate or necessary for the protection and preservation of such fisheries and the exercise of the rights of British subjects therein and of the liberty which by the said Article I the inhabitants of the United States have therein in common with British subjects;

(b) Desirable on grounds of public order and morals;

(c) Equitable and fair as between local fishermen and the inhabitants of the United States exercising the said treaty liberty and not so framed as to give unfairly an advantage to the former over the latter class.

It is contended on the part of the United States that the exercise of such liberty is not subject to limitations or restraints by Great Britain, Canada, or Newfoundland in the form of municipal laws, ordinances, or regulations in respect of (1) the hours, days, or seasons when the inhabitants of the United States may take fish on the treaty coasts, or (2) the method, means, and implements used by them in taking fish or in carrying on fishing operations on such coasts, or (3) any other limitations or restraints of similar character —

(a) Unless they are appropriate and necessary for the protection and preservation of the common rights in such fisheries and the exercise thereof; and

(b) Unless they are reasonable in themselves and fair as between local fishermen and fishermen coming from the United States, and not so framed as to give an advantage to the former over the latter class; and

(c) Unless their appropriateness, necessity, reasonableness, and fairness be determined by the United States and Great Britain by common accord and the United States concurs in their enforcement.

Question 2. Have the inhabitants of the United States, while exercising the liberties referred to in said Article, a right to employ as members of the fishing crews of their vessels persons not inhabitants of the United States?

Question 3. Can the exercise by the inhabitants of the United States of the liberties referred to in the said Article be subjected, without the consent of the United States, to the requirements of entry or report at custom-houses or the payment of light or harbour or other dues, or to any other similar requirement or condition or exaction?

Question 4. Under the provision of the said Article that the American fishermen shall be admitted to enter certain bays or harbours for shelter, repairs, wood, or water, and for no other purpose whatever, but that they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein or in any other manner whatever abusing the privileges thereby reserved to them, is it permissible to impose restrictions making the exercise of such privileges conditional upon the payment of light or harbour or other dues, or entering or reporting at custom-houses or any similar conditions?

Question 5. From where must be measured the "three marine miles of any of the coasts, bays, creeks, or harbours" referred to in the said Article?

Question 6. Have the inhabitants of the United States the liberty under the said Article or otherwise to take fish in the bays, harbours, and creeks on that part of the southern coast of Newfoundland which extends from Cape Ray to Rameau Islands, or on the western and northern coasts of Newfoundland from Cape Ray to Quirpon Islands, or on the Magdalen Islands?

Question 7. — Are the inhabitants of the United States whose vessels resort to the treaty coasts for the purpose of exercising the liberties referred to in Article I of the treaty of 1818 entitled to have for those vessels, when duly authorized by the United States in that behalf, the commercial privileges on the treaty coasts accorded by agreement or otherwise to United States trading-vessels generally?

ARTICLE II

Either Party may call the attention of the Tribunal to any legislative or executive act of the other Party, specified within three months of the exchange of notes enforcing this agreement, and which is claimed to be inconsistent with the true interpretation of the Treaty of 1818; and may call upon the Tribunal to express in its award its opinion upon such acts, and to point out in what respects, if any, they are inconsistent with the principles laid down in the award in reply to the preceding questions; and each Party agrees to conform to such opinion.

ARTICLE III

If any question arises in the arbitration regarding the reasonableness of any regulation or otherwise which requires an examination of the practical effect of any provisions in relation to the conditions surrounding the exercise of the liberty of fishery enjoyed by the inhabitants of the United States, or which requires expert information about the fisheries themselves, the Tribunal may, in that case, refer such question to a Commission of three expert specialists in such matters; one to be designated by each of the Parties hereto, and the third, who shall not be a national of either Party, to be designated by the Tribunal. This Commission shall examine into and report their conclusions on any question or questions so referred to it by the Tribunal and such report shall be considered by the Tribunal and shall, if incorporated by them in the award, be accepted as a part thereof.

Pending the report of the Commission upon the question or questions so referred and without awaiting such report, the Tribunal may make a separate award upon all or any other questions before it, and such separate award, if made, shall become immediately effective, provided that the report aforesaid shall not be incorporated in the award until it has been considered by the Tribunal. The expenses of such Commission shall be borne in equal moieties by the Parties hereto.

ARTICLE IV

The Tribunal shall recommend for the consideration of the High Contracting Parties rules and a method of procedure under which all

questions which may arise in the future regarding the exercise of the liberties above referred to may be determined in accordance with the principles laid down in the award. If the High Contracting Parties shall not adopt the rules and method of procedure so recommended, or if they shall not, subsequently to the delivery of the award, agree upon such rules and methods, then any differences which may arise in the future between the High Contracting Parties relating to the interpretation of the Treaty of 1818 or to the effect and application of the award of the Tribunal shall be referred informally to the Permanent Court at The Hague for decision by the summary procedure provided in Chapter IV of The Hague Convention of the 18th October, 1907.

ARTICLE V

The Tribunal of Arbitration provided for herein shall be chosen from the general list of members of the Permanent Court at The Hague, in accordance with the provisions of Article XLV of the Convention for the Settlement of International Disputes, concluded at the Second Peace Conference at The Hague on the 18th of October, 1907. The provisions of said Convention, so far as applicable and not inconsistent herewith, and excepting Articles LIII and LIV, shall govern the proceedings under the submission herein provided for.

The time allowed for the direct agreement of His Britannic Majesty and the President of the United States on the composition of such Tribunal shall be three months.

ARTICLE VI

The pleadings shall be communicated in the order and within the time following : —

As soon as may be and within a period not exceeding seven months from the date of the exchange of notes making this agreement binding the printed case of each of the Parties hereto, accompanied by printed copies of the documents, the official correspondence, and all other evidence on which each Party relies, shall be delivered in duplicate (with such additional copies as may be agreed upon)

to the agent of the other Party. It shall be sufficient for this purpose if such case is delivered at the British Embassy at Washington or at the American Embassy at London, as the case may be, for transmission to the agent for its Government.

Within fifteen days thereafter such printed case and accompanying evidence of each of the Parties shall be delivered in duplicate to each member of the Tribunal, and such delivery may be made by depositing within the stated period the necessary number of copies with the International Bureau at The Hague for transmission to the Arbitrators.

After the delivery on both sides of such printed case, either Party may, in like manner, and within four months after the expiration of the period above fixed for the delivery to the agents of the case, deliver to the agent of the other Party (with such additional copies as may be agreed upon), a printed counter-case accompanied by printed copies of additional documents, correspondence, and other evidence in reply to the case, documents, correspondence, and other evidence so presented by the other Party, and within fifteen days thereafter such Party shall, in like manner as above provided, deliver in duplicate such counter-case and accompanying evidence to each of the Arbitrators.

The foregoing provisions shall not prevent the Tribunal from permitting either Party to rely at the hearing upon documentary or other evidence which is shown to have become open to its investigation or examination or available for use too late to be submitted within the period hereinabove fixed for the delivery of copies of evidence, but in case any such evidence is to be presented, printed copies of it, as soon as possible after it is secured, must be delivered, in like manner as provided for the delivery of copies of other evidence, to each of the Arbitrators and to the agent of the other Party. The admission of any such additional evidence, however, shall be subject to such conditions as the Tribunal may impose, and the other Party shall have a reasonable opportunity to offer additional evidence in rebuttal.

The Tribunal shall take into consideration all evidence which is offered by either Party.

ARTICLE VII

If in the case or counter-case (exclusive of the accompanying evidence) either Party shall have specified or referred to any documents, correspondence, or other evidence in its own exclusive possession without annexing a copy, such Party shall be bound, if the other Party shall demand it within thirty days after the delivery of the case or counter-case respectively, to furnish to the Party applying for it a copy thereof; and either Party may, within the like time, demand that the other shall furnish certified copies or produce for inspection the originals of any documentary evidence adduced by the Party upon whom the demand is made. It shall be the duty of the Party upon whom any such demand is made to comply with it as soon as may be, and within a period not exceeding fifteen days after the demand has been received. The production for inspection or the furnishing to the other Party of official governmental publications, publishing, as authentic, copies of the documentary evidence referred to, shall be a sufficient compliance with such demand, if such governmental publications shall have been published prior to the 1st day of January, 1908. If the demand is not complied with, the reasons for the failure to comply must be stated to the Tribunal.

ARTICLE VIII

The Tribunal shall meet within six months after the expiration of the period above fixed for the delivery to the agents of the case, and upon the assembling of the Tribunal at its first session each Party, through its agent or counsel, shall deliver in duplicate to each of the Arbitrators and to the agent and counsel of the other Party (with such additional copies as may be agreed upon) a printed argument showing the points and referring to the evidence upon which it relies.

The time fixed by this Agreement for the delivery of the case, counter-case, or argument, and for the meeting of the Tribunal, may be extended by mutual consent of the Parties.

ARTICLE IX

The decision of the Tribunal shall, if possible, be made within two months from the close of the arguments on both sides, unless on the

request of the Tribunal the Parties shall agree to extend the period.

It shall be made in writing, and dated and signed by each member of the Tribunal, and shall be accompanied by a statement of reasons.

A member who may dissent from the decision may record his dissent when signing.

The language to be used throughout the proceedings shall be English.

ARTICLE X

Each Party reserves to itself the right to demand a revision of the award. Such demand shall contain a statement of the grounds on which it is made and shall be made within five days of the promulgation of the award, and shall be heard by the Tribunal within ten days thereafter. The Party making the demand shall serve a copy of the same on the opposite Party, and both Parties shall be heard in argument by the Tribunal on said demand. The demand can only be made on the discovery of some new fact or circumstance calculated to exercise a decisive influence upon the award and which was unknown to the Tribunal and to the Party demanding the revision at the time the discussion was closed, or upon the ground that the said award does not fully and sufficiently, within the meaning of this Agreement, determine any question or questions submitted. If the Tribunal shall allow the demand for a revision, it shall afford such opportunity for further hearings and arguments as it shall deem necessary.

ARTICLE XI

The present Agreement shall be deemed to be binding only when confirmed by the two Governments by an exchange of notes.

In witness whereof this Agreement has been signed and sealed by His Britannic Majesty's Ambassador at Washington, the Right Honourable James Bryce, O.M., on behalf of Great Britain, and by the Secretary of State of the United States, Elihu Root, on behalf of the United States.

Done at Washington on the 27th day of January, one thousand nine hundred and nine.

JAMES BRYCE [seal]
ELIHU ROOT [seal]

MR. BACON TO MR. BRYCE

DEPARTMENT OF STATE

Nº. 541.]

February 21, 1909

EXCELLENCY: I have the honor to inform you that the Senate, by its resolution of the 18th instant, gave its advice and consent to the ratification of the Special Agreement between the United States and Great Britain, signed on January 27, 1909, for the submission to the Permanent Court of Arbitration at The Hague of questions relating to fisheries on the North Atlantic Coast.

In giving this advice and consent to the ratification of the Special Agreement, and as a part of the act of ratification, the Senate states in the resolution its understanding:

That it is agreed by the United States and Great Britain that question 5 of the series submitted, namely, "from where must be measured the three marine miles of any of the coasts, bays, creeks or harbors referred to in said article," does not include any question as to the Bay of Fundy, considered as a whole apart from its bays or creeks, or as to innocent passage through the Gut of Canso, and that the respective views or contentions of the United States and Great Britain on either subject shall be in no wise prejudiced by anything in the present arbitration, and that this agreement on the part of the United States will be mentioned in the ratification of the special agreement and will, in effect, form part of this special agreement.

In thus formally confirming what I stated to you orally, I have the honor to express the hope that you will in like manner formally confirm the assent of His Majesty's Government to this understanding which you heretofore stated to me orally, and that you will be prepared at an early day to exchange the notes confirming the Special Agreement as provided for therein and in the general arbitration convention of June 5, 1908.

I have the honor to be, with the highest consideration,

Your Excellency's most obedient servant,

ROBERT BACON

His Excellency The Right Honorable JAMES BRYCE

Etc., Etc., Etc.

MR. BRYCE TO MR. BACON

Nº. 55.]

BRITISH EMBASSY

Washington, March 4, 1909

SIR: I have the honour to acknowledge the receipt of your note informing me that the Senate of the United States has approved the Special Agreement for the reference to arbitration of the questions relating to the fisheries on the North Atlantic Coast and of the terms of the Resolution in which that approval is given.

It is now my duty to inform you that the Government of His Britannic Majesty confirms the Special Agreement aforesaid and in so doing confirms also the understanding arrived at by us that Question V of the series of Questions submitted for arbitration, namely from where must be measured the "three marine miles of any of the coasts, bays, creeks, or harbours" referred to in the said article, is submitted in its present form with the agreed understanding that no question as to the Bay of Fundy considered as a whole apart from its bays or creeks, or as to innocent passage through the Gut of Canso, is included in this question as one to be raised in the present arbitration, it being the intention of the Parties that their respective views or contentions on either subject shall be in no wise prejudiced by anything in the present arbitration.

This understanding is that which was embodied in notes exchanged between your predecessor and myself on January 27th, and is that expressed in the above-mentioned Resolution of the Senate of the United States.

I have the honour to be, with the highest respect, Sir,

Your most obedient, humble Servant,

JAMES BRYCE

The Honourable, ROBERT BACON

Etc., Etc., Etc.

ARBITRAL AWARD RENDERED SEPTEMBER 7, 1910, IN THE
QUESTION OF THE NORTH ATLANTIC COAST FISHERIES

PREAMBLE

Whereas a Special Agreement between the United States of America and Great Britain, signed at Washington the 27th January, 1909, and confirmed by interchange of Notes dated the 4th March, 1909, was concluded in conformity with the provisions of the General Arbitration Treaty between the United States of America and Great Britain, signed the 4th April, 1908, and ratified the 4th June, 1908;

And whereas the said Special Agreement for the submission of questions relating to fisheries on the North Atlantic Coast under the general treaty of arbitration concluded between the United States and Great Britain on the 4th day of April, 1908, is as follows:

ARTICLE I

Whereas by Article I of the Convention signed at London on the 20th day of October, 1818, between Great Britain and the United States, it was agreed as follows:—

Whereas differences have arisen respecting the liberty claimed by the United States for the Inhabitants thereof, to take, dry and cure Fish on Certain Coasts, Bays, Harbours and Creeks of His Britannic Majesty's Dominions in America, it is agreed between the High Contracting Parties, that the Inhabitants of the said United States shall have forever, in common with the Subjects of His Britannic Majesty, the Liberty to take Fish of every kind on that part of the Southern Coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the Western and Northern Coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the Coasts, Bays, Harbours, and Creeks from Mount Joly on the Southern Coast of Labrador, to and through the Straits of Belleisle and thence Northwardly indefinitely along the Coast, without prejudice, however, to any of the exclusive Rights of the Hudson Bay Company; and that the American Fishermen shall also have liberty forever, to dry and cure Fish in any of the unsettled Bays, Harbours

and Creeks of the Southern part of the Coast of Newfoundland hereabove described, and of the Coast of Labrador; but so soon as the same, or any Portion thereof, shall be settled, it shall not be lawful for the said Fishermen to dry or cure Fish at such Portion so settled, without previous agreement for such purpose with the Inhabitants, Proprietors, or Possessors of the ground. — And the United States hereby renounce forever, any Liberty heretofore enjoyed or claimed by the Inhabitants thereof, to take, dry, or cure Fish on, or within three marine Miles of any of the Coasts, Bays, Creeks, or Harbours of His Britannic Majesty's Dominions in America not included within the above-mentioned limits; provided, however, that the American Fishermen shall be admitted to enter such Bays or Harbours for the purpose of Shelter and of repairing Damages therein, of purchasing Wood, and of obtaining Water, and for no other purpose whatever. But they shall be under such Restrictions as may be necessary to prevent their taking, drying or curing Fish therein, or in any other manner whatever abusing the Privileges hereby reserved to them.

And, whereas, differences have arisen as to the scope and meaning of the said Article, and of the liberties therein referred to, and otherwise in respect of the rights and liberties which the inhabitants of the United States have or claim to have in the waters or on the shores therein referred to:

It is agreed that the following questions shall be submitted for decision to a tribunal of arbitration constituted as hereinafter provided: —

Question 1. — To what extent are the following contentions or either of them justified?

It is contended on the part of Great Britain that the exercise of the liberty to take fish referred to in the said Article, which the inhabitants of the United States have forever in common with the subjects of His Britannic Majesty, is subject, without the consent of the United States, to reasonable regulation by Great Britain, Canada, or Newfoundland in the form of municipal laws, ordinances, or rules, as, for example, to regulations in respect of (1) the hours, days, or seasons when fish may be taken on the treaty coasts;

(2) the method, means, and implements to be used in the taking of fish or in the carrying on of fishing operations on such coasts; (3) any other matters of a similar character relating to fishing; such regulations being reasonable, as being, for instance —

(a) Appropriate or necessary for the protection and preservation of such fisheries and the exercise of the rights of British subjects therein and of the liberty which by the said Article I the inhabitants of the United States have therein in common with British subjects;

(b) Desirable on grounds of public order and morals;

(c) Equitable and fair as between local fishermen and the inhabitants of the United States exercising the said treaty liberty and not so framed as to give unfairly an advantage to the former over the latter class.

It is contended on the part of the United States that the exercise of such liberty is not subject to limitations or restraints by Great Britain, Canada, or Newfoundland in the form of municipal laws, ordinances, or regulations in respect of (1) the hours, days, or seasons when the inhabitants of the United States may take fish on the treaty coasts, or (2) the method, means, and implements used by them in taking fish or in carrying on fishing operations on such coasts, or (3) any other limitations or restraints of similar character —

(a) Unless they are appropriate and necessary for the protection and preservation of the common rights in such fisheries and the exercise thereof; and

(b) Unless they are reasonable in themselves and fair as between local fishermen and fishermen coming from the United States, and not so framed as to give an advantage to the former over the latter class; and

(c) Unless their appropriateness, necessity, reasonableness, and fairness be determined by the United States and Great Britain by common accord and the United States concurs in their enforcement.

Question 2. Have the inhabitants of the United States, while exercising the liberties referred to in said Article, a right to employ as members of the fishing crews of their vessels persons not inhabitants of the United States?

Question 3. Can the exercise by the inhabitants of the United States of the liberties referred to in the said Article be subjected, without the consent of the United States, to the requirements of entry or report at custom-houses or the payment of light or harbour or other dues, or to any other similar requirement or condition or exaction?

Question 4. Under the provision of the said Article that the American fishermen shall be admitted to enter certain bays or harbours for shelter, repairs, wood, or water, and for no other purpose whatever, but that they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein or in any other manner whatever abusing the privileges thereby reserved to them, is it permissible to impose restrictions making the exercise of such privileges conditional upon the payment of light or harbour or other dues, or entering or reporting at custom-houses or any similar conditions?

Question 5. From where must be measured the "three marine miles of any of the coasts, bays, creeks, or harbours" referred to in the said Article?

Question 6. Have the inhabitants of the United States the liberty under the said Article or otherwise to take fish in the bays, harbours, and creeks on that part of the southern coast of Newfoundland which extends from Cape Ray to Rameau Islands, or on the western and northern coasts of Newfoundland from Cape Ray to Quirpon Islands, or on the Magdalen Islands?

Question 7. — Are the inhabitants of the United States whose vessels resort to the treaty coasts for the purpose of exercising the liberties referred to in Article I of the treaty of 1818 entitled to have for those vessels, when duly authorized by the United States in that behalf, the commercial privileges on the treaty coasts accorded by agreement or otherwise to United States trading-vessels generally?

ARTICLE II

Either Party may call the attention of the Tribunal to any legislative or executive act of the other Party, specified within three months of the exchange of notes enforcing this agreement, and which is claimed to be inconsistent with the true interpretation of the

Treaty of 1818; and may call upon the Tribunal to express in its award its opinion upon such acts, and to point out in what respects, if any, they are inconsistent with the principles laid down in the award in reply to the preceding questions; and each Party agrees to conform to such opinion.

ARTICLE III

If any question arises in the arbitration regarding the reasonableness of any regulation or otherwise which requires an examination of the practical effect of any provisions in relation to the conditions surrounding the exercise of the liberty of fishery enjoyed by the inhabitants of the United States, or which requires expert information about the fisheries themselves, the Tribunal may, in that case, refer such question to a Commission of three expert specialists in such matters; one to be designated by each of the Parties hereto, and the third, who shall not be a national of either Party, to be designated by the Tribunal. This Commission shall examine into and report their conclusions on any question or questions so referred to it by the Tribunal and such report shall be considered by the Tribunal and shall, if incorporated by them in the award, be accepted as a part thereof.

Pending the report of the Commission upon the question or questions so referred and without awaiting such report, the Tribunal may make a separate award upon all or any other questions before it, and such separate award, if made, shall become immediately effective, provided that the report aforesaid shall not be incorporated in the award until it has been considered by the Tribunal. The expenses of such Commission shall be borne in equal moieties by the Parties hereto.

ARTICLE IV

The Tribunal shall recommend for the consideration of the High Contracting Parties rules and a method of procedure under which all questions which may arise in the future regarding the exercise of the liberties above referred to may be determined in accordance with the principles laid down in the award. If the High Contracting Parties shall not adopt the rules and method of procedure so recommended, or if they shall not, subsequently to the delivery of

the award, agree upon such rules and methods, then any differences which may arise in the future between the High Contracting Parties relating to the interpretation of the Treaty of 1818 or to the effect and application of the award of the Tribunal shall be referred informally to the Permanent Court at The Hague for decision by the summary procedure provided in Chapter IV of The Hague Convention of the 18th October, 1907.

ARTICLE V

The Tribunal of Arbitration provided for herein shall be chosen from the general list of members of the Permanent Court at The Hague, in accordance with the provisions of Article XLV of the Convention for the Settlement of International Disputes, concluded at the Second Peace Conference at The Hague on the 18th of October, 1907. The provisions of said Convention, so far as applicable and not inconsistent herewith, and excepting Articles LIII and LIV, shall govern the proceedings under the submission herein provided for.

The time allowed for the direct agreement of His Britannic Majesty and the President of the United States on the composition of such Tribunal shall be three months.

ARTICLE VI

The pleadings shall be communicated in the order and within the time following : —

As soon as may be and within a period not exceeding seven months from the date of the exchange of notes making this agreement binding the printed case of each of the Parties hereto, accompanied by printed copies of the documents, the official correspondence, and all other evidence on which each Party relies, shall be delivered in duplicate (with such additional copies as may be agreed upon) to the agent of the other Party. It shall be sufficient for this purpose if such case is delivered at the British Embassy at Washington or at the American Embassy at London, as the case may be, for transmission to the agent for its Government.

Within fifteen days thereafter such printed case and accompanying evidence of each of the Parties shall be delivered in duplicate

to each member of the Tribunal, and such delivery may be made by depositing within the stated period the necessary number of copies with the International Bureau at The Hague for transmission to the Arbitrators.

After the delivery on both sides of such printed case, either Party may, in like manner, and within four months after the expiration of the period above fixed for the delivery to the agents of the case, deliver to the agent of the other Party (with such additional copies as may be agreed upon), a printed counter-case accompanied by printed copies of additional documents, correspondence, and other evidence in reply to the case, documents, correspondence, and other evidence so presented by the other Party, and within fifteen days thereafter such Party shall, in like manner as above provided, deliver in duplicate such counter-case and accompanying evidence to each of the Arbitrators.

The foregoing provisions shall not prevent the Tribunal from permitting either Party to rely at the hearing upon documentary or other evidence which is shown to have become open to its investigation or examination or available for use too late to be submitted within the period hereinabove fixed for the delivery of copies of evidence, but in case any such evidence is to be presented, printed copies of it, as soon as possible after it is secured, must be delivered, in like manner as provided for the delivery of copies of other evidence, to each of the Arbitrators and to the agent of the other Party. The admission of any such additional evidence, however, shall be subject to such conditions as the Tribunal may impose, and the other Party shall have a reasonable opportunity to offer additional evidence in rebuttal.

The Tribunal shall take into consideration all evidence which is offered by either Party.

ARTICLE VII

If in the case or counter-case (exclusive of the accompanying evidence) either Party shall have specified or referred to any documents, correspondence, or other evidence in its own exclusive possession without annexing a copy, such Party shall be bound, if the other Party shall demand it within thirty days after the de-

livery of the case or counter-case respectively, to furnish to the Party applying for it a copy thereof; and either Party may, within the like time, demand that the other shall furnish certified copies or produce for inspection the originals of any documentary evidence adduced by the Party upon whom the demand is made. It shall be the duty of the Party upon whom any such demand is made to comply with it as soon as may be, and within a period not exceeding fifteen days after the demand has been received. The production for inspection or the furnishing to the other Party of official governmental publications, publishing, as authentic, copies of the documentary evidence referred to, shall be a sufficient compliance with such demand, if such governmental publications shall have been published prior to the 1st day of January 1908. If the demand is not complied with, the reasons for the failure to comply must be stated to the Tribunal.

ARTICLE VIII

The Tribunal shall meet within six months after the expiration of the period above fixed for the delivery to the agents of the case, and upon the assembling of the Tribunal at its first session each Party, through its agent or counsel, shall deliver in duplicate to each of the Arbitrators and to the agent and counsel of the other Party (with such additional copies as may be agreed upon) a printed argument showing the points and referring to the evidence upon which it relies.

The time fixed by this Agreement for the delivery of the case, counter-case, or argument, and for the meeting of the Tribunal, may be extended by mutual consent of the Parties.

ARTICLE IX

The decision of the Tribunal shall, if possible, be made within two months from the close of the arguments on both sides, unless on the request of the Tribunal the Parties shall agree to extend the period.

It shall be made in writing, and dated and signed by each member of the Tribunal, and shall be accompanied by a statement of reasons.

A member who may dissent from the decision may record his dissent when signing.

The language to be used throughout the proceedings shall be English.

ARTICLE X

Each Party reserves to itself the right to demand a revision of the award. Such demand shall contain a statement of the grounds on which it is made and shall be made within five days of the promulgation of the award, and shall be heard by the Tribunal within ten days thereafter. The Party making the demand shall serve a copy of the same on the opposite Party, and both Parties shall be heard in argument by the Tribunal on said demand. The demand can only be made on the discovery of some new fact or circumstance calculated to exercise a decisive influence upon the award and which was unknown to the Tribunal and to the Party demanding the revision at the time the discussion was closed, or upon the ground that the said award does not fully and sufficiently, within the meaning of this Agreement, determine any question or questions submitted. If the Tribunal shall allow the demand for a revision, it shall afford such opportunity for further hearings and arguments as it shall deem necessary.

ARTICLE XI

The present Agreement shall be deemed to be binding only when confirmed by the two Governments by an exchange of notes.

In witness whereof this Agreement has been signed and sealed by His Britannic Majesty's Ambassador at Washington, the Right Honourable James Bryce, O.M., on behalf of Great Britain, and by the Secretary of State of the United States, Elihu Root, on behalf of the United States.

Done at Washington on the 27th day of January, one thousand nine hundred and nine.

JAMES BRYCE [seal]

ELIHU ROOT [seal]

And whereas, the parties to the said Agreement have by common accord, in accordance with Article V, constituted as a Tribunal of Arbitration the following Members of the Permanent Court at The Hague: Mr. H. Lammasch, Doctor of Law, Professor of the Uni-

versity of Vienna, Aulic Councillor, Member of the Upper House of the Austrian Parliament; His Excellency Jonkheer A. F. de Savornin Lohman, Doctor of Law, Minister of State, Former Minister of the Interior, Member of the Second Chamber of the Netherlands; the Honourable George Gray, Doctor of Laws, Judge of the United States Circuit Court of Appeals, former United States Senator; the Right Honourable Sir Charles Fitzpatrick, Member of the Privy Council, Doctor of Laws, Chief Justice of Canada; the Honourable Luis Maria Drago, Doctor of Law, former Minister of Foreign Affairs of the Argentine Republic, Member of the Law Academy of Buenos-Aires;

And whereas, the Agents of the Parties to the said Agreement have duly and in accordance with the terms of the Agreement communicated to this Tribunal their cases, counter-cases, printed arguments and other documents;

And whereas, counsel for the Parties have fully presented to this Tribunal their oral arguments in the sittings held between the first assembling of the Tribunal on 1st June, 1910, to the close of the hearings on 12th August, 1910;

Now, therefore, this Tribunal having carefully considered the said Agreement, cases, counter-cases, printed and oral arguments, and the documents presented by either side, after due deliberation makes the following decisions and awards:

QUESTION I

To what extent are the following contentions or either of them justified?

It is contended on the part of Great Britain that the exercise of the liberty to take fish referred to in the said Article, which the inhabitants of the United States have forever in common with the subjects of His Britannic Majesty, is subject, without the consent of the United States, to reasonable regulation by Great Britain, Canada, or Newfoundland in the form of municipal laws, ordinances, or rules, as, for example, to regulations in respect of (1) the hours, days, or seasons when fish may be taken on the treaty coasts; (2) the method, means, and implements to be used in the taking of fish or in the carrying on of fishing operations on such coasts; (3) any

other matters of a similar character relating to fishing; such regulations being reasonable, as being, for instance —

(a) Appropriate or necessary for the protection and preservation of such fisheries and the exercise of the rights of British subjects therein and of the liberty which by the said Article I the inhabitants of the United States have therein in common with British subjects;

(b) Desirable on grounds of public order and morals;

(c) Equitable and fair as between local fishermen and the inhabitants of the United States exercising the said treaty liberty, and not so framed as to give unfairly an advantage to the former over the latter class.

It is contended on the part of the United States that the exercise of such liberty is not subject to limitations or restraints by Great Britain, Canada, or Newfoundland in the form of municipal laws, ordinances, or regulations in respect of (1) the hours, days, or seasons when the inhabitants of the United States may take fish on the treaty coasts, or (2) the method, means, and implements used by them in taking fish or in carrying on fishing operations on such coasts, or (3) any other limitations or restraints of similar character —

(a) Unless they are appropriate and necessary for the protection and preservation of the common rights in such fisheries and the exercise thereof; and

(b) Unless they are reasonable in themselves and fair as between local fishermen and fishermen coming from the United States, and not so framed as to give an advantage to the former over the latter class; and

(c) Unless their appropriateness, necessity, reasonableness, and fairness be determined by the United States and Great Britain by common accord and the United States concurs in their enforcement.

Question I, thus submitted to the Tribunal, resolves itself into two main contentions:

1st. Whether the right of regulating reasonably the liberties conferred by the Treaty of 1818 resides in Great Britain;

2nd. And, if such right does so exist, whether such reasonable exercise of the right is permitted to Great Britain without the accord and concurrence of the United States.

The Treaty of 1818 contains no explicit disposition in regard to the right of regulation, reasonable or otherwise; it neither reserves that right in express terms, nor refers to it in any way. It is therefore incumbent on this Tribunal to answer the two questions above indicated by interpreting the general terms of Article I of the Treaty, and more especially the words "the inhabitants of the United States shall have, for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind." This interpretation must be conformable to the general import of the instrument, the general intention of the parties to it, the subject matter of the contract, the expressions actually used and the evidence submitted.

Now in regard to the preliminary question as to whether the right of reasonable regulation resides in Great Britain:

Considering that the right to regulate the liberties conferred by the Treaty of 1818 is an attribute of sovereignty, and as such must be held to reside in the territorial sovereign, unless the contrary be provided; and considering that one of the essential elements of sovereignty is that it is to be exercised within territorial limits, and that, failing proof to the contrary, the territory is coterminous with the Sovereignty, it follows that the burden of the assertion involved in the contention of the United States (viz. that the right to regulate does not reside independently in Great Britain, the territorial Sovereign) must fall on the United States. And for the purpose of sustaining this burden, the United States have put forward the following series of propositions, each one of which must be singly considered.

It is contended by the United States:

(1) That the French right of fishery under the treaty of 1763 designated also as a liberty, was never subjected to regulation by Great Britain, and therefore the inference is warranted that the American liberties of fishery are similarly exempted.

The Tribunal is unable to agree with this contention:

(a) Because although the French right designated in 1713 merely "an allowance," (a term of even less force than that used in regard to the American fishery) was nevertheless converted, in practice,

into an exclusive right, this concession on the part of Great Britain was presumably made because France, before 1713, claimed to be the sovereign of Newfoundland, and, in ceding the Island, had, as the American argument says, "reserved for the benefit of its subjects the right to fish and to use the strand";

(b) Because the distinction between the French and American right is indicated by the different wording of the Statutes for the observance of Treaty obligations towards France and the United States, and by the British Declaration of 1783;

(c) And, also, because this distinction is maintained in the Treaty with France of 1904, concluded at a date when the American claim was approaching its present stage, and by which certain common rights of regulation are recognized to France.

For the further purpose of such proof it is contended by the United States :

(2) That the liberties of fishery, being accorded to the inhabitants of the United States "for ever," acquire, by being in perpetuity and unilateral, a character exempting them from local legislation.

The Tribunal is unable to agree with this contention :

(a) Because there is no necessary connection between the duration of a grant and its essential status in its relation to local regulation; a right granted in perpetuity may yet be subject to regulation, or, granted temporarily, may yet be exempted therefrom; or being reciprocal may yet be unregulated, or being unilateral may yet be regulated: as is evidenced by the claim of the United States that the liberties of fishery accorded by the Reciprocity Treaty of 1854 and the Treaty of 1871 were exempt from regulation, though they were neither permanent nor unilateral;

(b) Because no peculiar character need be claimed for these liberties in order to secure their enjoyment in perpetuity, as is evidenced by the American negotiators in 1818 asking for the insertion of the words "for ever." International law in its modern development recognizes that a great number of Treaty obligations are not annulled by war, but at most suspended by it;

(c) Because the liberty to dry and cure is, pursuant to the terms

of the Treaty, provisional and not permanent, and is nevertheless, in respect of the liability to regulation, identical in its nature with, and never distinguished from, the liberty to fish.

For the further purpose of such proof, the United States allege :

(3) That the liberties of fishery granted to the United States constitute an international servitude in their favour over the territory of Great Britain, thereby involving a derogation from the sovereignty of Great Britain, the servient State, and that therefore Great Britain is deprived, by reason of the grant, of its independent right to regulate the fishery.

The Tribunal is unable to agree with this contention :

(a) Because there is no evidence that the doctrine of international servitudes was one with which either American or British Statesmen were conversant in 1818, no English publicists employing the term before 1818, and the mention of it in Mr. Gallatin's report being insufficient ;

(b) Because a servitude in the French law, referred to by Mr. Gallatin, can, since the Code, be only real and cannot be personal (Code Civil, art. 686) ;

(c) Because a servitude in international law predicates an express grant of a sovereign right and involves an analogy to the relation of a *praedium dominans* and a *praedium serviens* ; whereas by the Treaty of 1818 one State grants a liberty to fish, which is not a sovereign right, but a purely economic right, to the inhabitants of another State ;

(d) Because the doctrine of international servitude in the sense which is now sought to be attributed to it originated in the peculiar and now obsolete conditions prevailing in the Holy Roman Empire of which the *domini terrae* were not fully sovereigns ; they holding territory under the Roman Empire, subject at least theoretically, and in some respects also practically, to the Courts of that Empire ; their right being, moreover, rather of a civil than of a public nature, partaking more of the character of *dominium* than of *imperium*, and therefore certainly not a complete sovereignty. And because

in contradistinction to this quasi-sovereignty with its incoherent attributes acquired at various times, by various means, and not impaired in its character by being incomplete in any one respect or by being limited in favour of another territory and its possessor, the modern State, and particularly Great Britain, has never admitted partition of sovereignty, owing to the constitution of a modern State requiring essential sovereignty and independence;

(e) Because this doctrine being but little suited to the principle of sovereignty which prevails in States under a system of constitutional government such as Great Britain and the United States, and to the present International relations of Sovereign States, has found little, if any, support from modern publicists. It could therefore in the general interest of the Community of Nations, and of the Parties to this Treaty, be affirmed by this Tribunal only on the express evidence of an international contract;

(f) Because even if these liberties of fishery constituted an international servitude, the servitude would derogate from the sovereignty of the servient State only in so far as the exercise of the rights of sovereignty by the servient State would be contrary to the exercise of the servitude right by the dominant State. Whereas it is evident that, though every regulation of the fishery is to some extent a limitation, as it puts limits to the exercise of the fishery at will, yet such regulations as are reasonable and made for the purpose of securing and preserving the fishery and its exercise for the common benefit, are clearly to be distinguished from those restrictions and "molestations," the annulment of which was the purpose of the American demands formulated by Mr. Adams in 1782, and such regulations consequently cannot be held to be inconsistent with a servitude;

(g) Because the fishery to which the inhabitants of the United States were admitted in 1783, and again in 1818, was a regulated fishery, as is evidenced by the following regulations:

Act 15 Charles II, Cap. 16, s. 7 (1663) forbidding "to lay any seine or other net in or near any harbour in Newfoundland, whereby to take the spawn or young fry of the Poor-John, or for any other use or uses, except for the taking of bait only," which had not been superseded either by the order in council of March 10th, 1670, or

by the statute 10 and XI Wm. III, Cap. 25, 1699. The order in council provides expressly for the obligation "to submit unto and to observe" all rules and orders as "are now, or hereafter shall be established," an obligation which cannot be read as referring only to the rules established by this very act, and having no reference to antecedent rules "as are now established." In a similar way, the statute of 1699 preserves in force prior legislation, conferring the freedom of fishery only "as fully and freely as at any time heretofore." The order in council, 1670, provides that the Admirals, who always were fishermen, arriving from an English or Welsh port, "see that His Majesty's rules and orders concerning the regulation of the fisheries are duly put in execution" (sec. 13). Likewise the Act 10 and XI, Wm. III, Cap. 25 (1699) provides that the Admirals do settle differences between the fishermen arising in respect of the places to be assigned to the different vessels. As to Nova Scotia, the proclamation of 1665 ordains that no one shall fish without license; that the licensed fishermen are obliged "to observe all laws and orders which now are made and published, or shall hereafter be made and published in this jurisdiction," and that they shall not fish on the Lord's day and shall not take fish at the time they come to spawn. The judgment of the Chief Justice of Newfoundland, October 26th 1820, is not held by the Tribunal sufficient to set aside the proclamations referred to. After 1783, the statute 26 Geo. III, Cap. 26, 1786, forbids "the use, on the shores of Newfoundland, of seines or nets for catching cod by hauling on shore or taking into boat, with meshes less than 4 inches"; a prohibition which cannot be considered as limited to the bank fishery. The act for regulating the fisheries of New Brunswick, 1793, which forbids "the placing of nets or seines across any cove or creek in the Province so as to obstruct the natural course of fish," and which makes specific provision for fishing in the Harbour of St. John, as to the manner and time of fishing, cannot be read as being limited to fishing from the shore. The act for regulating the fishing on the coast of Northumberland (1799) contains very elaborate dispositions concerning the fisheries in the bay of Miramichi which were continued in 1823, 1829 and 1834. The statutes of Lower Canada, 1788 and 1807, forbid the throwing over-

board of offal. The fact that these acts extend the prohibition over a greater distance than the first marine league from the shore may make them nonoperative against foreigners without the territorial limits of Great Britain, but is certainly no reason to deny their obligatory character for foreigners within these limits.

(h) Because the fact that Great Britain rarely exercised the right of regulation in the period immediately succeeding 1818 is to be explained by various circumstances and is not evidence of the nonexistence of the right;

(i) Because the words "in common with British subjects" tend to confirm the opinion that the inhabitants of the United States were admitted to a regulated fishery;

(j) Because the statute of Great Britain, 1819, which gives legislative sanction to the Treaty of 1818, provides for the making of "regulations with relation to the taking, drying and curing of fish by inhabitants of the United States in 'common.'"

For the purpose of such proof, it is further contended by the United States, in this latter connection:

(4) That the words "in common with British subjects" used in the Treaty should not be held as importing a common subjection to regulation, but as intending to negative a possible pretention on the part of the inhabitants of the United States to liberties of fishery exclusive of the right of British subjects to fish.

The Tribunal is unable to agree with this contention:

(a) Because such an interpretation is inconsistent with the historical basis of the American fishing liberty. The ground on which Mr. Adams founded the American right in 1782 was that the people then constituting the United States had always, when still under British rule, a part in these fisheries and that they must continue to enjoy their past right in the future. He proposed "that the subjects of His Britannic Majesty and the people of the United States shall continue to enjoy unmolested the right to take fish where the inhabitants of both countries used, at any time heretofore, to fish." The theory of the partition of the fisheries, which by the American negotiators had been advanced

with so much force, negatives the assumption that the United States could ever pretend to an exclusive right to fish on the British shores; and to insert a special disposition to that end would have been wholly superfluous;

(b) Because the words "in common" occur in the same connection in the Treaty of 1818 as in the Treaties of 1854 and 1871. It will certainly not be suggested that in these Treaties of 1854 and 1871 the American negotiators meant by inserting the words "in common" to imply that without these words American citizens would be precluded from the right to fish on their own coasts and that, on American shores, British subjects should have an exclusive privilege. It would have been the very opposite of the concept of territorial waters to suppose that, without a special treaty-provision, British subjects could be excluded from fishing in British waters. Therefore that cannot have been the scope and the sense of the words "in common";

(c) Because the words "in common" exclude the supposition that American inhabitants were at liberty to act at will for the purpose of taking fish, without any regard to the co-existing rights of other persons entitled to do the same thing; and because these words admit them only as members of a social community, subject to the ordinary duties binding upon the citizens of that community, as to the regulations made for the common benefit; thus avoiding the "*bellum omnium contra omnes*" which would otherwise arise in the exercise of this industry;

(d) Because these words are such as would naturally suggest themselves to the negotiators of 1818 if their intention had been to express a common subjection to regulations as well as a common right.

In the course of the Argument it has also been alleged by the United States:

(5) That the Treaty of 1818 should be held to have entailed a transfer or partition of sovereignty, in that it must in respect to the liberties of fishery be interpreted in its relation to the Treaty of 1783; and that this latter Treaty was an act of partition of sovereignty and of separation, and as such was not annulled by the war of 1812.

Although the Tribunal is not called upon to decide the issue whether the Treaty of 1783 was a treaty of partition or not, the questions involved therein having been set at rest by the subsequent Treaty of 1818, nevertheless the Tribunal could not forbear to consider the contention on account of the important bearing the controversy has upon the true interpretation of the Treaty of 1818. In that respect the Tribunal is of opinion :

(a) That the right to take fish was accorded as a condition of peace to a foreign people ; wherefore the British negotiators refused to place the right of British subjects on the same footing with those of American inhabitants ; and further, refused to insert the words also proposed by Mr. Adams — “continue to enjoy” — in the second branch of Art. III of the Treaty of 1783 ;

(b) That the Treaty of 1818 was in different terms, and very different in extent, from that of 1783, and was made for different considerations. It was, in other words, a new grant.

For the purpose of such proof it is further contended by the United States :

(6) That as contemporary Commercial Treaties contain express provisions for submitting foreigners to local legislation, and the Treaty of 1818 contains no such provision, it should be held, *a contrario*, that inhabitants of the United States exercising these liberties are exempt from regulation.

The Tribunal is unable to agree with this contention :

(a) Because the Commercial Treaties contemplated did not admit foreigners to all and equal rights, seeing that local legislation excluded them from many rights of importance, *e.g.* that of holding land ; and the purport of the provisions in question consequently was to preserve these discriminations. But no such discriminations existing in the common enjoyment of the fishery by American and British fishermen, no such provision was required ;

(b) Because no proof is furnished of similar exemptions of foreigners from local legislation in default of Treaty stipulations subjecting them thereto ;

(c) Because no such express provision for subjection of the nationals of either Party to local law was made either in this Treaty, in respect to their reciprocal admission to certain territories as agreed in Art. III, or in Art. III of the Treaty of 1794; although such subjection was clearly contemplated by the Parties.

For the purpose of such proof it is further contended by the United States :

(7) That, as the liberty to dry and cure on the Treaty coasts and to enter bays and harbours on the non-treaty coasts are both subjected to conditions, and the latter to specific restrictions, it should therefore be held that the liberty to fish should be subjected to no restrictions, as none are provided for in the Treaty.

The Tribunal is unable to apply the principle of "*expressio unius exclusio alterius*" to this case :

(a) Because the conditions and restrictions as to the liberty to dry and cure on the shore and to enter the harbours are limitations of the rights themselves, and not restrictions of their exercise. Thus the right to dry and cure is limited in duration, and the right to enter bays and harbours is limited to particular purposes ;

(b) Because these restrictions of the right to enter bays and harbours applying solely to American fishermen must have been expressed in the Treaty, whereas regulations of the fishery, applying equally to American and British, are made by right of territorial sovereignty.

For the purpose of such proof it has been contended by the United States :

(8) That Lord Bathurst in 1815 mentioned the American right under the Treaty of 1783 as a right to be exercised "at the discretion of the United States"; and that this should be held as to be derogatory to the claim of exclusive regulation by Great Britain.

But the Tribunal is unable to agree with this contention :

(a) Because these words implied only the necessity of an express stipulation for any liberty to use foreign territory at the pleasure of the grantee, without touching any question as to regulation ;

(b) Because in this same letter Lord Bathurst characterized this right as a policy "temporary and experimental, depending on the use that might be made of it, on the condition of the islands and places where it was to be exercised, and the more general conveniences or inconveniences from a military, naval and commercial point of view"; so that it cannot have been his intention to acknowledge the exclusion of British interference with this right;

(c) Because Lord Bathurst in his note to Governor Sir C. Hamilton in 1819 orders the Governor to take care that the American fishery on the coast of Labrador be carried on *in the same manner* as previous to the late war; showing that he did not interpret the Treaty just signed as a grant conveying absolute immunity from interference with the American fishery right.

For the purpose of such proof it is further contended by the United States:

(9) That on various other occasions following the conclusion of the Treaty, as evidenced by official correspondence, Great Britain made use of expressions inconsistent with the claim to a right of regulation.

The Tribunal, unwilling to invest such expressions with an importance entitling them to affect the general question, considers that such conflicting or inconsistent expressions as have been exposed on either side are sufficiently explained by their relations to ephemeral phases of a controversy of almost secular duration, and should be held to be without direct effect on the principal and present issues.

Now with regard to the second contention involved in Question I, as to whether the right of regulation can be reasonably exercised by Great Britain without the consent of the United States:

Considering that the recognition of a concurrent right of consent in the United States would affect the independence of Great Britain, which would become dependent on the Government of the United States for the exercise of its sovereign right of regulation, and considering that such a co-dominium would be contrary to the

constitution of both sovereign States; the burden of proof is imposed on the United States to show that the independence of Great Britain was thus impaired by international contract in 1818 and that a co-dominium was created.

For the purpose of such proof it is contended by the United States :

(10) That a concurrent right to cooperate in the making and enforcement of regulations is the only possible and proper security to their inhabitants for the enjoyment of their liberties of fishery, and that such a right must be held to be implied in the grant of those liberties by the Treaty under interpretation.

The Tribunal is unable to accede to this claim on the ground of a right so implied :

(a) Because every State has to execute the obligations incurred by Treaty *bona fide*, and is urged thereto by the ordinary sanctions of International Law in regard to observance of Treaty obligations. Such sanctions are, for instance, appeal to public opinion, publication of correspondence, censure by Parliamentary vote, demand for arbitration with the odium attendant on a refusal to arbitrate, rupture of relations, reprisal, etc. But no reason has been shown why this Treaty, in this respect, should be considered as different from every other Treaty under which the right of a State to regulate the action of foreigners admitted by it on its territory is recognized ;

(b) Because the exercise of such a right of consent by the United States would predicate an abandonment of its independence in this respect by Great Britain, and the recognition by the latter of a concurrent right of regulation in the United States. But the Treaty conveys only a liberty to take fish in common, and neither directly nor indirectly conveys a joint right of regulation ;

(c) Because the Treaty does not convey a common right of fishery, but a liberty to fish in common. This is evidenced by the attitude of the United States Government in 1823, with respect to the relations of Great Britain and France in regard to the fishery ;

(d) Because if the consent of the United States were requisite

for the fishery a general veto would be accorded them, the full exercise of which would be socially subversive and would lead to the consequence of an unregulatable fishery;

(e) Because the United States cannot by assent give legal force and validity to British legislation;

(f) Because the liberties to take fish in British territorial waters and to dry and cure fish on land in British territory are in principle on the same footing; but in practice a right of cooperation in the elaboration and enforcement of regulations in regard to the latter liberty (drying and curing fish on land) is unrealisable.

In any event, Great Britain, as the local sovereign, has the duty of preserving and protecting the fisheries. In so far as it is necessary for that purpose, Great Britain is not only entitled, but obliged, to provide for the protection and preservation of the fisheries; always remembering that the exercise of this right of legislation is limited by the obligation to execute the Treaty in good faith. This has been admitted by counsel and recognized by Great Britain in limiting the right of regulation to that of reasonable regulation. The inherent defect of this limitation of reasonableness, without any sanction except in diplomatic remonstrance, has been supplied by the submission to arbitral award as to existing regulations in accordance with Arts. II and III of the Special Agreement, and as to further regulation by the obligation to submit their reasonableness to an arbitral test in accordance with Art. IV of the Agreement.

It is finally contended by the United States:

That the United States did not expressly agree that the liberty granted to them could be subjected to any restriction that the grantor might choose to impose on the ground that in her judgment such restriction was reasonable. And that while admitting that all laws of a general character, controlling the conduct of men within the territory of Great Britain, are effective, binding and beyond objection by the United States, and competent to be made upon the sole determination of Great Britain or her colony, without accountability to anyone whomsoever; yet there is somewhere a line, beyond which it is not competent for Great Britain to go, or beyond which she cannot rightfully go, because to go beyond it

would be an invasion of the right granted to the United States in 1818. That the legal effect of the grant of 1818 was not to leave the determination as to where that line is to be drawn to the uncontrolled judgment of the grantor, either upon the grantor's consideration as to what would be a reasonable exercise of its sovereignty over the British Empire, or upon the grantor's consideration of what would be a reasonable exercise thereof towards the grantee.

But this contention is founded on assumptions, which this Tribunal cannot accept for the following reasons in addition to those already set forth :

(a) Because the line by which the respective rights of both Parties accruing out of the Treaty are to be circumscribed, can refer only to the right granted by the Treaty; that is to say to the liberty of taking, drying and curing fish by American inhabitants in certain British waters in common with British subjects, and not to the exercise of rights of legislation by Great Britain not referred to in the Treaty;

(b) Because a line which would limit the exercise of sovereignty of a State within the limits of its own territory can be drawn only on the ground of express stipulation, and not by implication from stipulations concerning a different subject-matter;

(c) Because the line in question is drawn according to the principle of international law that treaty obligations are to be executed in perfect good faith, therefore excluding the right to legislate *at will* concerning the subject-matter of the Treaty, and limiting the exercise of sovereignty of the States bound by a treaty with respect to that subject-matter to such acts as are consistent with the treaty;

(d) Because on a true construction of the Treaty the question does not arise whether the United States agreed that Great Britain should retain the right to legislate with regard to the fisheries in her own territory; but whether the Treaty contains an abdication by Great Britain of the right which Great Britain, as the sovereign power, undoubtedly possessed when the Treaty was made, to regulate those fisheries;

(e) Because the right to make reasonable regulations, not in-

consistent with the obligations of the Treaty, which is all that is claimed by Great Britain, for a fishery which both Parties admit requires regulation for its preservation, is not a restriction of or an invasion of the liberty granted to the inhabitants of the United States. This grant does not contain words to justify the assumption that the sovereignty of Great Britain upon its own territory was in any way affected; nor can words be found in the treaty transferring any part of that sovereignty to the United States. Great Britain assumed only duties with regard to the exercise of its sovereignty. The sovereignty of Great Britain over the coastal waters and territory of Newfoundland remains after the Treaty as unimpaired as it was before. But from the Treaty results an obligatory relation whereby the right of Great Britain to exercise its right of sovereignty by making regulations is limited to such regulations as are made in good faith, and are not in violation of the Treaty;

(f) Finally to hold that the United States, the grantee of the fishing right, has a voice in the preparation of fishery legislation involves the recognition of a right in that country to participate in the internal legislation of Great Britain and her Colonies, and to that extent would reduce these countries to a state of dependence.

While therefore unable to concede the claim of the United States as based on the Treaty, this Tribunal considers that such claim has been and is to some extent, conceded in the relations now existing between the two Parties. Whatever may have been the situation under the Treaty of 1818 standing alone, the exercise of the right of regulation inherent in Great Britain has been, and is, limited by the repeated recognition of the obligations already referred to, by the limitations and liabilities accepted in the Special Agreement, by the unequivocal position assumed by Great Britain in the presentation of its case before this Tribunal, and by the consequent view of this Tribunal that it would be consistent with all the circumstances, as revealed by this record, as to the duty of Great Britain, that she should submit the reasonableness of any future regulation to such an impartial arbitral test, affording full opportunity therefor, as is hereafter recommended under the authority of Article IV of the Special Agreement, whenever the reasonable-

ness of any regulation is objected to or challenged by the United States in the manner, and within the time hereinafter specified in the said recommendation.

Now therefore this Tribunal decides and awards as follows :

The right of Great Britain to make regulations without the consent of the United States, as to the exercise of the liberty to take fish referred to in Article I of the Treaty of October 20th, 1818, in the form of municipal laws, ordinances or rules of Great Britain, Canada or Newfoundland is inherent to the sovereignty of Great Britain.

The exercise of that right by Great Britain is, however, limited by the said Treaty in respect of the said liberties therein granted to the inhabitants of the United States in that such regulations must be made bona fide and must not be in violation of the said Treaty.

Regulations which are (1) appropriate or necessary for the protection and preservation of such fisheries, or (2) desirable or necessary on grounds of public order and morals without unnecessarily interfering with the fishery itself, and in both cases equitable and fair as between local and American fishermen, and not so framed as to give unfairly an advantage to the former over the latter class, are not inconsistent with the obligation to execute the Treaty in good faith, and are therefore reasonable and not in violation of the Treaty.

For the decision of the question whether a regulation is or is not reasonable, as being or not in accordance with the dispositions of the Treaty and not in violation thereof, the Treaty of 1818 contains no special provision. The settlement of differences in this respect that might arise thereafter was left to the ordinary means of diplomatic intercourse. By reason, however, of the form in which Question I is put, and by further reason of the admission of Great Britain by her counsel before this Tribunal that it is not now for either of the Parties to the Treaty to determine the reasonableness of any regulation made by Great Britain, Canada or Newfoundland, the reasonableness of any such regulation, if contested, must be decided not by either of the Parties, but by an impartial authority in accordance with the principles hereinabove laid down, and in the manner proposed in the recommendations made by the Tribunal in virtue of Article IV of the Agreement.

The Tribunal further decides that Article IV of the Agreement is,

as stated by counsel of the respective Parties at the argument, permanent in its effect, and not terminable by the expiration of the General Arbitration Treaty of 1908, between Great Britain and the United States.

In execution, therefore, of the responsibilities imposed upon this Tribunal in regard to Articles II, III and IV of the Special Agreement, we hereby pronounce in their regard as follows:

AS TO ARTICLE II

Pursuant to the provisions of this Article, hereinbefore cited, either Party has called the attention of this Tribunal to acts of the other claimed to be inconsistent with the true interpretation of the Treaty of 1818.

But in response to a request from the Tribunal, recorded in Protocol No. XXVI of 19th July, for an exposition of the grounds of such objections, the Parties replied as reported in Protocol No. XXX of 28th July to the following effect:

His Majesty's Government considered that it would be unnecessary to call upon the Tribunal for an opinion under the second clause of Article II, in regard to the executive act of the United States of America in sending warships to the territorial waters in question, in view of the recognized motives of the United States of America in taking this action and of the relations maintained by their representatives with the local authorities. And this being the sole act to which the attention of this Tribunal has been called by His Majesty's Government, no further action in their behalf is required from this Tribunal under Article II.

The United States of America presented a statement in which their claim that specific provisions of certain legislative and executive acts of the Governments of Canada and Newfoundland were inconsistent with the true interpretation of the Treaty of 1818 was based on the contention that these provisions were not "reasonable" within the meaning of Question I.

After calling upon this Tribunal to express an opinion on these acts, pursuant to the second clause of Article II, the United States of America pointed out in that statement that under Article III any question regarding the reasonableness of any regulation might be referred by the Tribunal to a Commission of expert specialists, and expressed an intention of asking for such reference under certain circumstances.

The Tribunal having carefully considered the counter-statement presented on behalf of Great Britain at the session of August 2nd, is of opinion that the decision on the reasonableness of these regulations requires expert information about the fisheries themselves and an examination of the practical effect of a great number of these provisions in relation to the conditions surrounding the exercise of the liberty of fishery enjoyed by the inhabitants of the United States, as contemplated by Article III. No further action on behalf of the United States is therefore required from this Tribunal under Article II.

AS TO ARTICLE III

As provided in Article III, hereinbefore cited and above referred to, "any question regarding the reasonableness of any regulation, or otherwise, which requires an examination of the practical effect of any provisions surrounding the exercise of the liberty of fishery enjoyed by the inhabitants of the United States, or which requires expert information about the fisheries themselves, may be referred by this Tribunal to a Commission of expert specialists; one to be designated by each of the Parties hereto and the third, who shall not be a national of either Party, to be designated by the Tribunal."

The Tribunal now therefore calls upon the Parties to designate within one month their national Commissioners for the expert examination of the questions submitted.

As the third non-national Commissioner this Tribunal designates Doctor P. P. C. Hoek, Scientific Adviser for the fisheries of the Netherlands and if any necessity arises therefor a substitute may be appointed by the President of this Tribunal.

After a reasonable time, to be agreed on by the Parties, for the expert Commission to arrive at a conclusion, by conference, or, if necessary, by local inspection, the Tribunal shall, if convoked by the President at the request of either Party, thereupon at the earliest convenient date, reconvene to consider the report of the Commission, and if it be on the whole unanimous shall incorporate it in the award. If not on the whole unanimous, i.e., on all points which in the opinion of the Tribunal are of essential importance, the Tribunal shall make its award as to the regulations concerned after consideration of the conclusions of the expert Commissioners and after hearing argument by counsel.

But while recognizing its responsibilities to meet the obligations imposed on it under Article III of the Special Agreement, the Tribunal hereby recommends as an alternative to having recourse to a reconvention of this Tribunal, that the Parties should accept the unanimous opinion of the Commission or the opinion of the non-national Commissioner on any points in dispute as an arbitral award rendered under the provisions of Chapter IV of the Hague Convention of 1907.

AS TO ARTICLE IV

Pursuant to the provisions of this Article, hereinbefore cited, this Tribunal recommends for the consideration of the Parties the following rules and method of procedure under which all questions which may arise in the future regarding the exercise of the liberties above referred to may be determined in accordance with the principles laid down in this award.

I

All future municipal laws, ordinances or rules for the regulation of the fishery by Great Britain in respect of (1) the hours, days or seasons when fish may be taken on the Treaty coasts; (2) the method, means and implements used in the taking of fish or in carrying on fishing operations; (3) any other regulation of a similar character shall be published in the London Gazette two months before going into operation.

Similar regulations by Canada or Newfoundland shall be similarly published in the Canada Gazette and the Newfoundland Gazette respectively.

2

If the Government of the United States considers any such laws or regulations inconsistent with the Treaty of 1818, it is entitled to so notify the Government of Great Britain within the two months referred to in Rule No. 1.

3

Any law or regulation so notified shall not come into effect with respect to inhabitants of the United States until the Permanent Mixed Fishery Commission has decided that the regulation is reasonable within the meaning of this award.

4

Permanent Mixed Fishery Commissions for Canada and Newfoundland respectively shall be established for the decision of such questions as to the reasonableness of future regulations, as contemplated by Article IV of the Special Agreement; these Commissions shall consist of an expert national appointed by either Party for five years. The third member shall not be a national of either Party; he shall be nominated for five years by agreement of the Parties, or failing such agreement within two months, he shall be nominated by Her Majesty the Queen of the Netherlands. The two national members shall be convoked by the Government of Great Britain within one month from the date of notification by the Government of the United States.

5

The two national members having failed to agree within one month, within another month the full Commission, under the presidency of the umpire, is to be convoked by Great Britain. It must deliver its decision, if the two Governments do not agree otherwise, at the latest in three months. The Umpire shall conduct the procedure in accordance with that provided in Chapter IV of the Convention for the Pacific Settlement of International Disputes, except in so far as herein otherwise provided.

6

The form of convocation of the Commission including the terms of reference of the question at issue shall be as follows: "The provision hereinafter fully set forth of an Act dated _____, published in the _____ has been notified to the Government of Great Britain by the Government of the United States, under date of _____, as provided by the award of the Hague Tribunal of September 7th, 1910.

"Pursuant to the provisions of that award the Government of Great Britain hereby convokes the Permanent Mixed Fishery Commission for _____ (Canada), composed of _____ (Newfoundland) Commissioner for the United States of America, and of _____ (Canada) Commissioner for _____ (Newfoundland), which shall meet at _____ and render a decision within one month as to whether the provision so notified is reasonable and con-

sistent with the Treaty of 1818, as interpreted by the award of the Hague Tribunal of September 7th, 1910, and if not, in what respect it is unreasonable and inconsistent therewith.

"Failing an agreement on this question within one month the Commission shall so notify the Government of Great Britain in order that the further action required by that award may be taken for the decision of the above question.

"The provision is as follows: _____

7

The unanimous decision of the two national Commissioners, or the majority decision of the Umpire and one Commissioner, shall be final and binding.

QUESTION II

Have the inhabitants of the United States, while exercising the liberties referred to in said Article, a right to employ as members of the fishing crews of their vessels persons not inhabitants of the United States?

In regard to this question the United States claim in substance:

1. That the liberty assured to their inhabitants by the Treaty plainly includes the right to use all the means customary or appropriate for fishing upon the sea, not only ships and nets and boats, but crews to handle the ships and the nets and the boats;
2. That no right to control or limit the means which these inhabitants shall use in fishing can be admitted unless it is provided in the terms of the Treaty and no right to question the nationality or inhabitancy of the crews employed is contained in the terms of the Treaty.

And Great Britain claims:

1. That the Treaty confers the liberty to inhabitants of the United States exclusively;
2. That the Governments of Great Britain, Canada or Newfoundland may, without infraction of the Treaty, prohibit persons from engaging as fishermen in American vessels.

Now considering (1) that the liberty to take fish is an economic right attributed by the Treaty; (2) that it is attributed to inhabitants of the United States, without any mention of their nationality; (3) that the exercise of an economic right includes the right to employ servants; (4) that the right of employing servants has not been limited by the Treaty to the employment of persons of a distinct nationality or inhabitancy; (5) that the liberty to take fish as an economic liberty refers not only to the individuals doing the manual act of fishing, but also to those for whose profit the fish are taken.

But considering, that the Treaty does not intend to grant to individual persons or to a class of persons the liberty to take fish in certain waters "in common," that is to say in company, with individual British subjects, in the sense that no law could forbid British subjects to take service on American fishing ships; (2) that the Treaty intends to secure to the United States a share of the fisheries designated therein, not only in the interest of a certain class of individuals, but also in the interest of both the United States and Great Britain, as appears from the evidence and notably from the correspondence between Mr. Adams and Lord Bathurst in 1815; (3) that the inhabitants of the United States do not derive the liberty to take fish directly from the Treaty, but from the United States Government as party to the Treaty with Great Britain and moreover exercising the right to regulate the conditions under which its inhabitants may enjoy the granted liberty; (4) that it is in the interest of the inhabitants of the United States that the fishing liberty granted to them be restricted to exercise by them and removed from the enjoyment of other aliens not entitled by this Treaty to participate in the fisheries; (5) that such restrictions have been throughout enacted in the British Statute of June 15, 1819, and that of June 3, 1824, to this effect, that no alien or stranger whatsoever shall fish in the waters designated therein, except in so far as by treaty thereto entitled, and that this exception will, in virtue of the Treaty of 1818, as hereinabove interpreted by this award, exempt from these statutes American fishermen fishing by the agency of non-inhabitant aliens employed in their service; (6) that the Treaty does not affect the sovereign right of Great

Britain as to aliens, non-inhabitants of the United States, nor the right of Great Britain to regulate the engagement of British subjects, while these aliens or British subjects are on British territory.

Now therefore, in view of the preceding considerations this Tribunal is of opinion that the inhabitants of the United States while exercising the liberties referred to in the said article have a right to employ, as members of the fishing crews of their vessels, persons not inhabitants of the United States.

But in view of the preceding considerations the Tribunal, to prevent any misunderstanding as to the effect of its award, expresses the opinion that non-inhabitants employed as members of the fishing crews of United States vessels derive no benefit or immunity from the Treaty and it is so decided and awarded.

QUESTION III

Can the exercise by the inhabitants of the United States of the liberties referred to in the said Article be subjected, without the consent of the United States, to the requirements of entry or report at custom-houses or the payment of light or harbour or other dues, or to any other similar requirement or condition or exaction?

The Tribunal is of opinion as follows:

It is obvious that the liberties referred to in this question are those that relate to taking fish and to drying and curing fish on certain coasts as prescribed in the Treaty of October 20, 1818. The exercise of these liberties by the inhabitants of the United States in the prescribed waters to which they relate, has no reference to any commercial privileges which may or may not attach to such vessels by reason of any supposed authority outside the Treaty, which itself confers no commercial privileges whatever upon the inhabitants of the United States or the vessels in which they may exercise the fishing liberty. It follows, therefore, that when the inhabitants of the United States are not seeking to exercise the commercial privileges accorded to trading vessels for the vessels in which they are exercising the granted liberty of fishing, they ought not to be subjected to requirements as to report and entry at custom houses that are only appropriate to the exercise of commercial privileges. The exercise of the fishing liberty is distinct

from the exercise of commercial or trading privileges and it is not competent for Great Britain or her colonies to impose upon the former exactions only appropriate to the latter. The reasons for the requirements enumerated in the case of commercial vessels, have no relation to the case of fishing vessels.

We think, however, that the requirement that American fishing vessels should report, if proper conveniences and an opportunity for doing so are provided, is not unreasonable or inappropriate. Such a report, while serving the purpose of a notification of the presence of a fishing vessel in the treaty waters for the purpose of exercising the treaty liberty, while it gives an opportunity for a proper surveillance of such vessel by revenue officers, may also serve to afford to such fishing vessel protection from interference in the exercise of the fishing liberty. There should be no such requirement, however, unless reasonably convenient opportunity therefor be afforded in person or by telegraph, at a custom-house or to a customs official.

The Tribunal is also of opinion that light and harbor dues, if not imposed on Newfoundland fishermen, should not be imposed on American fishermen while exercising the liberty granted by the Treaty. To impose such dues on American fishermen only would constitute an unfair discrimination between them and Newfoundland fishermen and one inconsistent with the liberty granted to American fishermen to take fish, etc., "in common with the subjects of His Britannic Majesty."

Further, the Tribunal considers that the fulfilment of the requirement as to report by fishing vessels on arrival at the fishery would be greatly facilitated in the interests of both parties by the adoption of a system of registration, and distinctive marking of the fishing boats of both parties, analogous to that established by Articles V to XIII, inclusive, of the International Convention signed at The Hague, 8 May, 1882, for the regulation of the North Sea Fisheries.

The Tribunal therefore decides and awards as follows:

The requirement that an American fishing vessel should report, if proper conveniences for doing so are at hand, is not unreasonable, for the reasons stated in the foregoing opinion. There should be no such

requirement, however, unless there be reasonably convenient opportunity afforded to report in person or by telegraph, either at a custom-house or to a customs official.

But the exercise of the fishing liberty by the inhabitants of the United States should not be subjected to the purely commercial formalities of report, entry and clearance at a custom-house, nor to light, harbour or other dues not imposed upon Newfoundland fishermen.

QUESTION IV

Under the provision of the said Article that the American fishermen shall be admitted to enter certain bays or harbours for shelter, repairs, wood, or water, and for no other purpose whatever, but that they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein or in any other manner whatever abusing the privileges thereby reserved to them, is it permissible to impose restrictions making the exercise of such privileges conditional upon the payment of light or harbour or other dues, or entering or reporting at custom-houses or any similar conditions?

The Tribunal is of opinion that the provision in the first Article of the Treaty of October 20th, 1818, admitting American fishermen to enter certain bays or harbors for shelter, repairs, wood and water, and for no other purpose whatever, is an exercise in large measure of those duties of hospitality and humanity which all civilized nations impose upon themselves and expect the performance of from others. The enumerated purposes for which entry is permitted all relate to the exigencies in which those who pursue their perilous calling on the sea may be involved. The proviso which appears in the first article of the said Treaty immediately after the so-called renunciation clause, was doubtless due to a recognition by Great Britain of what was expected from the humanity and civilization of the then leading commercial nation of the world. To impose restrictions making the exercise of such privileges conditional upon the payment of light, harbor or other dues, or entering and reporting at custom-houses, or any similar conditions would be inconsistent with the grounds upon which such privileges rest and therefore is not permissible.

And it is decided and awarded that such restrictions are not permissible.

It seems reasonable, however, in order that these privileges accorded by Great Britain on these grounds of hospitality and humanity should not be abused, that the American fishermen entering such bays for any of the four purposes aforesaid and remaining more than 48 hours therein, should be required, if thought necessary by Great Britain or the Colonial Government, to report, either in person or by telegraph, at a custom-house or to a customs official, if reasonably convenient opportunity therefor is afforded.

And it is so decided and awarded.

QUESTION V

From where must be measured the "three marine miles of any of the coasts, bays, creeks, or harbours" referred to in the said Article?

In regard to this question, Great Britain claims that the renunciation applies to all bays generally and

The United States contend that it applies to bays of a certain class or condition.

Now, considering that the Treaty used the general term "bays" without qualification, the Tribunal is of opinion that these words of the Treaty must be interpreted in a general sense as applying to every bay on the coast in question that might be reasonably supposed to have been considered as a bay by the negotiators of the Treaty under the general conditions then prevailing, unless the United States can adduce satisfactory proof that any restrictions or qualifications of the general use of the term were or should have been present to their minds.

And for the purpose of such proof the United States contend :

1°. That while a State may renounce the treaty right to fish in foreign territorial waters, it cannot renounce the natural right to fish on the High Seas.

But the Tribunal is unable to agree with this contention. Because though a State cannot grant rights on the High Seas it certainly can abandon the exercise of its right to fish on the High Seas

within certain definite limits. Such an abandonment was made with respect to their fishing rights in the waters in question by France and Spain in 1763. By a convention between the United Kingdom and the United States in 1846, the two countries assumed ownership over waters in Fuca Straits at distances from the shore as great as 17 miles.

The United States contend moreover :

2°. That by the use of the term "liberty to fish" the United States manifested the intention to renounce the liberty in the waters referred to only in so far as that liberty was dependent upon or derived from a concession on the part of Great Britain, and not to renounce the right to fish in those waters where it was enjoyed by virtue of their natural right as an independent State.

But the Tribunal is unable to agree with this contention :

(a) Because the term "liberty to fish" was used in the renunciatory clause of the Treaty of 1818 because the same term had been previously used in the Treaty of 1783 which gave the liberty ; and it was proper to use in the renunciation clause the same term that was used in the grant with respect to the object of the grant ; and, in view of the terms of the grant, it would have been improper to use the term "right" in the renunciation. Therefore the conclusion drawn from the use of the term "liberty" instead of the term "right" is not justified ;

(b) Because the term "liberty" was a term properly applicable to the renunciation which referred not only to fishing in the territorial waters but also to drying and curing on the shore. This latter right was undoubtedly held under the provisions of the Treaty and was not a right accruing to the United States by virtue of any principle of international law.

3°. The United States also contend that the term "bays of His Britannic Majesty's Dominions" in the renunciatory clause must be read as including only those bays which were under the territorial sovereignty of Great Britain.

But the Tribunal is unable to accept this contention :

(a) Because the description of the coast on which the fishery is

to be exercised by the inhabitants of the United States is expressed throughout the Treaty of 1818 in geographical terms and not by reference to political control; the Treaty describes the coast as contained between capes;

(b) Because to express the political concept of dominion as equivalent to sovereignty, the word "dominion" in the singular would have been an adequate term and not "dominions" in the plural; this latter term having a recognized and well settled meaning as descriptive of those portions of the Earth which owe political allegiance to His Majesty; *e.g.* "His Britannic Majesty's Dominions beyond the Seas."

4°. It has been further contended by the United States that the renunciation applies only to bays six miles or less in width "*inter fauces terrae*," those bays only being territorial bays, because the three mile rule is, as shown by this Treaty, a principle of international law applicable to coasts and should be strictly and systematically applied to bays.

But the Tribunal is unable to agree with this contention:

(a) Because admittedly the geographical character of a bay contains conditions which concern the interests of the territorial sovereign to a more intimate and important extent than do those connected with the open coast. Thus conditions of national and territorial integrity, of defence, of commerce and of industry are all vitally concerned with the control of the bays penetrating the national coast line. This interest varies, speaking generally in proportion to the penetration inland of the bay; but as no principle of international law recognizes any specified relation between the concavity of the bay and the requirements for control by the territorial sovereignty, this Tribunal is unable to qualify by the application of any new principle its interpretation of the Treaty of 1818 as excluding bays in general from the strict and systematic application of the three mile rule; nor can this Tribunal take cognizance in this connection of other principles concerning the territorial sovereignty over bays such as ten mile or twelve mile limits of exclusion based on international acts subsequent to the treaty

of 1818 and relating to coasts of a different configuration and conditions of a different character;

(b) Because the opinion of jurists and publicists quoted in the proceedings conduce to the opinion that speaking generally the three mile rule should not be strictly and systematically applied to bays;

(c) Because the treaties referring to these coasts, antedating the treaty of 1818, made special provisions as to bays, such as the Treaties of 1686 and 1713 between Great Britain and France, and especially the Treaty of 1778 between the United States and France. Likewise Jay's Treaty of 1794 Art. 25, distinguished bays from the space "within cannon-shot of the coast" in regard to the right of seizure in times of war. If the proposed treaty of 1806 and the treaty of 1818 contained no disposition to that effect, the explanation may be found in the fact that the first extended the marginal belt to five miles, and also in the circumstance that the American proposition of 1818 in that respect was not limited to "bays," but extended to "chambers formed by headlands" and to "five marine miles from a right line from one headland to another," a proposition which in the times of the Napoleonic wars would have affected to a very large extent the operations of the British navy;

(d) Because it has not been shown by the documents and correspondence in evidence here that the application of the three mile rule to bays was present to the minds of the negotiators in 1818 and they could not reasonably have been expected either to presume it or to provide against its presumption;

(e) Because it is difficult to explain the words in art. III of the Treaty under interpretation "country together with its bays, harbours and creeks" otherwise than that all bays without distinction as to their width were, in the opinion of the negotiators, part of the territory;

(f) Because from the information before this Tribunal it is evident that the three mile rule is not applied to bays strictly or systematically either by the United States or by any other Power;

(g) It has been recognized by the United States that bays stand apart, and that in respect of them territorial jurisdiction may be exercised farther than the marginal belt in the case of Delaware

bay by the report of the United States Attorney General of May 19th 1793; and the letter of Mr. Jefferson to Mr. Genet of Nov. 8th 1793 declares the bays of the United States generally to be, "as being landlocked, within the body of the United States."

5°. In this latter regard it is further contended by the United States, that such exceptions only should be made from the application of the three mile rule to bays as are sanctioned by conventions and established usage; that all exceptions for which the United States of America were responsible are so sanctioned; and that His Majesty's Government are unable to provide evidence to show that the bays concerned by the Treaty of 1818 could be claimed as exceptions on these grounds either generally, or except possibly in one or two cases, specifically.

But the Tribunal while recognizing that conventions and established usage might be considered as the basis for claiming as territorial those bays which on this ground might be called historic bays, and that such claim should be held valid in the absence of any principle of international law on the subject; nevertheless is unable to apply this, *a contrario*, so as to subject the bays in question to the three mile rule, as desired by the United States:

(a) Because Great Britain has during this controversy asserted a claim to these bays generally, and has enforced such claim specifically in statutes or otherwise, in regard to the more important bays such as Chaleurs, Conception and Miramichi;

(b) Because neither should such relaxations of this claim, as are in evidence, be construed as renunciations of it; nor should omissions to enforce the claim in regard to bays as to which no controversy arose, be so construed. Such a construction by this Tribunal would not only be intrinsically inequitable but internationally injurious; in that it would discourage conciliatory diplomatic transactions and encourage the assertion of extreme claims in their fullest extent;

(c) Because any such relaxations in the extreme claim of Great Britain in its international relations are compensated by recognitions of it in the same sphere by the United States; notably in

relations with France for instance in 1823 when they applied to Great Britain for the protection of their fishery in the bays on the western coast of Newfoundland, whence they had been driven by French war vessels on the ground of the pretended exclusive right of the French. Though they never asserted that their fishermen had been disturbed within the three mile zone, only alleging that the disturbance had taken place in the bays, they claimed to be protected by Great Britain for having been molested in waters which were, as Mr. Rush stated "clearly within the jurisdiction and sovereignty of Great Britain."

6°. It has been contended by the United States that the words "coasts, bays, creeks or harbours" are here used only to express different parts of the coast and are intended to express and be equivalent to the word "coast," whereby the three marine miles would be measured from the sinuosities of the coast and the renunciation would apply only to the waters of bays within three miles.

But the Tribunal is unable to agree with this contention :

(a) Because it is a principle of interpretation that words in a document ought not to be considered as being without any meaning if there is not specific evidence to that purpose and the interpretation referred to would lead to the consequence, practically, of reading the words "bays, creeks and harbours" out of the Treaty ; so that it would read "within three miles of any of the coasts" including therein the coasts of the bays and harbours ;

(b) Because the word "therein" in the proviso — "restrictions necessary to prevent their taking, drying or curing fish therein" can refer only to "bays," and not to the belt of three miles along the coast ; and can be explained only on the supposition that the words "bays, creeks and harbours" are to be understood in their usual ordinary sense and not in an artificially restricted sense of bays within the three mile belt ;

(c) Because the practical distinction for the purpose of this fishery between coasts and bays and the exceptional conditions pertaining to the latter has been shown from the correspondence and the documents in evidence, especially the Treaty of 1783, to

have been in all probability present to the minds of the negotiators of the Treaty of 1818;

(d) Because the existence of this distinction is confirmed in the same article of the Treaty by the proviso permitting the United States fishermen to enter bays for certain purposes;

(e) Because the word "coasts" is used in the plural form whereas the contention would require its use in the singular;

(f) Because the Tribunal is unable to understand the term "bays" in the renunciatory clause in other than its geographical sense, by which a bay is to be considered as an indentation of the coast, bearing a configuration of a particular character easy to determine specifically, but difficult to describe generally.

The negotiators of the Treaty of 1818 did probably not trouble themselves with subtle theories concerning the notion of "bays" they most probably thought that everybody would know what was a bay. In this popular sense the term must be interpreted in the Treaty. The interpretation must take into account all the individual circumstances which for any one of the different bays are to be appreciated, the relation of its width to the length of penetration inland, the possibility and the necessity of its being defended by the State in whose territory it is indented; the special value which it has for the industry of the inhabitants of its shores; the distance which it is secluded from the highways of nations on the open sea and other circumstances not possible to enumerate in general.

For these reasons the Tribunal decides and awards:

In case of bays the three marine miles are to be measured from a straight line drawn across the body of water at the place where it ceases to have the configuration and characteristics of a bay. At all other places the three marine miles are to be measured following the sinuosities of the coast.

But considering the Tribunal cannot overlook that this answer to Question V, although correct in principle and the only one possible in view of the want of a sufficient basis for a more concrete answer, is not entirely satisfactory as to its practical applicability, and that it leaves room for doubts and differences in practice.

Therefore the Tribunal considers it its duty to render the decision more practicable and to remove the danger of future differences by adjoining to it, a recommendation in virtue of the responsibilities imposed by Art. IV of the Special Agreement.

Considering, moreover, that in treaties with France, with the North German Confederation and the German Empire and likewise in the North Sea Convention, Great Britain has adopted for similar cases the rule that only bays of ten miles width should be considered as those wherein the fishing is reserved to nationals. And that in the course of the negotiations between Great Britain and the United States a similar rule has been on various occasions proposed and adopted by Great Britain in instructions to the naval officers stationed on these coasts. And that though these circumstances are not sufficient to constitute this a principle of international law, it seems reasonable to propose this rule with certain exceptions, all the more that this rule with such exceptions has already formed the basis of an agreement between the two Powers.

Now therefore this Tribunal in pursuance of the provisions of art. IV hereby recommends for the consideration and acceptance of the High Contracting Parties the following rules and method of procedure for determining the limits of the bays hereinbefore enumerated.

I

In every bay not hereinafter specifically provided for the limits of exclusion shall be drawn three miles seaward from a straight line across the bay in the part nearest the entrance at the first point where the width does not exceed ten miles.

2

In the following bays where the configuration of the coast and the local climatic conditions are such that foreign fishermen when within the geographic headlands might reasonably and bona fide believe themselves on the high seas, the limits of exclusion shall be drawn in each case between the headlands hereinafter specified as being those at and within which such fishermen might be reasonably expected to recognize the bay under average conditions.

For the Baie des Chaleurs the line from the Light at Birch Point on Miscou Island to Macquereau Point Light: for the Bay of Miramichi, the line from the Light at Point Escuminac to the Light on the Eastern Point of Tabisintac Gully; for Egmont Bay, in Prince Edward Island, the line from the light at Cape Egmont to the Light at West Point; and off St. Ann's Bay, in the Province of Nova Scotia, the line from the Light at Point Anconi to the nearest point on the opposite shore of the mainland.

For Fortune Bay, in Newfoundland, the line from Connaigre Head to the Light on the Southeasterly end of Brunet Island, thence to Fortune Head.

For or near the following bays the limits of exclusion shall be three marine miles seawards from the following lines, namely:

For or near Barrington Bay, in Nova Scotia, the line from the Light on Stoddart Island to the Light on the south point of Cape Sable, thence to the light at Baccaro Point; at Chedabucto and St. Peter's Bays, the line from Cranberry Island Light to Green Island Light, thence to Point Rouge; for Mira Bay, the line from the Light on the East Point of Scatari Island to the Northeasterly Point of Cape Morien; and at Placentia Bay, in Newfoundland, the line from Latine Point, on the Eastern mainland shore, to the most Southerly Point of Red Island, thence by the most Southerly Point of Merasheen Island to the mainland.

Long Island and Bryer Island, on St. Mary's Bay, in Nova Scotia, shall, for the purpose of delimitation, be taken as the coasts of such bays.

It is understood that nothing in these rules refers either to the Bay of Fundy considered as a whole apart from its bays and creeks or as to the innocent passage through the Gut of Canso, which were excluded by the agreement made by exchange of notes between Mr. Bacon and Mr. Bryce dated February 21st 1909 and March 4th 1909; or to Conception Bay, which was provided for by the decision of the Privy Council in the case of the Direct United States Cable Company v. The Anglo American Telegraph Company, in which decision the United States have acquiesced.

QUESTION VI

Have the inhabitants of the United States the liberty under the said Article or otherwise, to take fish in the bays, harbours, and creeks on that part of the southern coast of Newfoundland which

extends from Cape Ray to Rameau Islands, or on the western and northern coasts of Newfoundland from Cape Ray to Quirpon Islands, or on the Magdalen Islands?

In regard to this question, it is contended by the United States that the inhabitants of the United States have the liberty under Art. I of the Treaty of taking fish in the bays, harbours and creeks on that part of the Southern Coast of Newfoundland which extends from Cape Ray to Rameau Islands or on the western and northern coasts of Newfoundland from Cape Ray to Quirpon Islands and on the Magdalen Islands. It is contended by Great Britain that they have no such liberty.

Now considering that the evidence seems to show that the intention of the Parties to the Treaty of 1818, as indicated by the records of the negotiations and by the subsequent attitude of the Governments was to admit the United States to such fishery, this Tribunal is of opinion that it is incumbent on Great Britain to produce satisfactory proof that the United States are not so entitled under the Treaty.

For this purpose Great Britain points to the fact that whereas the Treaty grants to American fishermen liberty to take fish "on the coasts, bays, harbours, and creeks from Mount Joly on the Southern coast of Labrador" the liberty is granted to the "coast" only of Newfoundland and to the "shore" only of the Magdalen Islands; and argues that evidence can be found in the correspondence submitted indicating an intention to exclude Americans from Newfoundland bays on the Treaty Coast, and that no value would have been attached at that time by the United States Government to the liberty of fishing in such bays because there was no codfishery there as there was in the bays of Labrador.

But the Tribunal is unable to agree with this contention:

(a) Because the words "part of the southern coast . . . from . . . to" and the words "Western and Northern Coast . . . from . . . to," clearly indicate one uninterrupted coast-line; and there is no reason to read into the words "coasts" a contradistinction to bays, in order to exclude bays. On the contrary, as already held

in the answer to Question V, the words "liberty, forever, to dry and cure fish in any of the unsettled bays, harbours and creeks of the Southern part of the Coast of Newfoundland hereabove described," indicate that in the meaning of the Treaty, as in all the preceding treaties relating to the same territories, the words coast, coasts, harbours, bays, etc., are used, without attaching to the word "coast" the specific meaning of excluding bays. Thus in the provision of the Treaty of 1783 giving liberty "to take fish on such part of the coast of Newfoundland as British fishermen shall use"; the word "coast" necessarily includes bays, because if the intention had been to prohibit the entering of the bays for fishing the following words "but not to dry or cure the same on that island," would have no meaning. The contention that in the Treaty of 1783, the word "bays" is inserted lest otherwise Great Britain would have had the right to exclude the Americans to the three mile line, is inadmissible, because in that Treaty that line is not mentioned;

(b) Because the correspondence between Mr. Adams and Lord Bathurst also shows that during the negotiations for the Treaty the United States demanded the former rights enjoyed under the Treaty of 1783, and that Lord Bathurst in the letter of 30th October 1815 made no objection to granting those "former rights" "placed under some modifications," which latter did not relate to the right of fishing in bays, but only to the "preoccupation of British harbours and creeks by the fishing vessels of the United States and the forcible exclusion of British subjects where the fishery might be most advantageously conducted," and "to the clandestine introduction of prohibited goods into the British colonies." It may be therefore assumed that the word "coast" is used in both Treaties in the same sense, including bays;

(c) Because the Treaty expressly allows the liberty to dry and cure in the unsettled bays, etc. of the southern part of the coast of Newfoundland, and this shows that, a fortiori, the taking of fish in those bays is also allowed; because the fishing liberty was a lesser burden than the grant to cure and dry, and the restrictive clauses never refer to fishing in contradistinction to drying, but always to drying in contradistinction to fishing. Fishing is granted without drying, never drying without fishing;

(d) Because there is not sufficient evidence to show that the enumeration of the component parts of the coast of Labrador was made in order to discriminate between the coast of Labrador and the coast of Newfoundland;

(e) Because the statement that there is no codfish in the bays of Newfoundland and that the Americans only took interest in the codfishery is not proved; and evidence to the contrary is to be found in Mr. John Adams Journal of Peace Negotiations of November 25, 1782;

(f) Because the Treaty grants the right to take fish of every kind, and not only codfish;

(g) Because the evidence shows that, in 1823, the Americans were fishing in Newfoundland bays and that Great Britain when summoned to protect them against expulsion therefrom by the French did not deny their right to enter such bays.

Therefore this Tribunal is of opinion that American inhabitants are entitled to fish in the bays, creeks and harbours of the Treaty coasts of Newfoundland and the Magdalen Islands and it is so decided and awarded.

QUESTION VII

Are the inhabitants of the United States whose vessels resort to the Treaty coasts for the purpose of exercising the liberties referred to in Article I of the Treaty of 1818 entitled to have for those vessels, when duly authorized by the United States in that behalf, the commercial privileges on the Treaty coasts accorded by agreement or otherwise to United States trading vessels generally?

Now assuming that commercial privileges on the Treaty coasts are accorded by agreement or otherwise to United States trading vessels generally, without any exception, the inhabitants of the United States, whose vessels resort to the same coasts for the purpose of exercising the liberties referred to in Article I of the Treaty of 1818, are entitled to have for those vessels when duly authorized by the United States in that behalf, the above mentioned commercial privileges, the Treaty containing nothing to the contrary. But they cannot at the same time and during the same voyage exercise their Treaty rights and enjoy their commercial privileges, because

Treaty rights and commercial privileges are submitted to different rules, regulations and restraints.

For these reasons this Tribunal is of opinion that the inhabitants of the United States are so entitled in so far as concerns this Treaty, there being nothing in its provisions to disentitle them provided the Treaty liberty of fishing and the commercial privileges are not exercised concurrently and it is so decided and awarded.

Done at The Hague, in the Permanent Court of Arbitration, in triplicate original, September 7th, 1910.

H. LAMMASCH

A. F. DE SAVORNIN LOHMAN

GEORGE GRAY

C. FITZPATRICK

LUIS M. DRAGO

Signing the Award, I state pursuant to Article IX clause 2 of the Special Agreement my dissent from the majority of the Tribunal in respect to the considerations and enacting part of the Award as to Question V.

Grounds for this dissent have been filed at the International Bureau of the Permanent Court of Arbitration.

LUIS M. DRAGO

GROUND'S FOR THE DISSENT TO THE AWARD ON QUESTION V BY
DR. LUIS M. DRAGO

Counsel for Great Britain have very clearly stated that according to their contention the territoriality of the bays referred to in the Treaty of 1818 is immaterial because whether they are or are not territorial, the United States should be excluded from fishing in them by the terms of the renunciatory clause, which simply refers to "bays, creeks or harbours of His Britannic Majesty's Dominions" without any other qualification or description. If that were so, the necessity might arise of discussing whether or not a nation has the right to exclude another by contract or otherwise from any portion or portions of the high seas. But in my opinion the Tri-

bunal need not concern itself with such general question, the wording of the treaty being clear enough to decide the point at issue.

Article I begins with the statement that differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry and cure fish on "certain coasts, bays, harbours and creeks of His Britannic Majesty's Dominions in America," and then proceeds to locate the specific portions of the coast with its corresponding indentations, in which the liberty of taking, drying and curing fish should be exercised. The renunciatory clause, which the Tribunal is called upon to construe, runs thus: "And the United States hereby renounce, forever, any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry or cure fish on, or within three marine miles of any of the Coasts, Bays, Creeks or Harbours of His Britannic Majesty's Dominions in America not included within the above mentioned limits." This language does not lend itself to different constructions. If the bays in which the liberty has been renounced are those "of His Britannic Majesty's Dominions in America," they must necessarily be territorial bays, because in so far as they are not so considered they should belong to the high seas and consequently form no part of His Britannic Majesty's Dominions, which, by definition, do not extend to the high seas. It cannot be said, as has been suggested, that the use of the word "dominions," in the plural, implies a different meaning than would be conveyed by the same term as used in the singular, so that in the present case, "the British dominions in America" ought to be considered as a mere geographical expression, without reference to any right of sovereignty or "*dominion*." It seems to me, on the contrary, that "dominions," or "possessions," or "estates," or such other equivalent terms, simply designate the places over which the "dominion" or property rights are exercised. Where there is no possibility of appropriation or dominion, as on the high seas, we cannot speak of dominions. The "dominions" extend exactly to the point which the "dominion" reaches; they are simply the actual or physical thing over which the abstract power or authority, the *right*, as given to the proprietor or the ruler, applies. The interpretation as to the territoriality of the bays as mentioned in the

renunciatory clause of the treaty appears stronger when considering that the United States specifically renounced the "liberty," not the "right" to fish or to cure and dry fish. "The United States renounce, forever, any *liberty* heretofore enjoyed or claimed, to take, cure or dry fish on, or within three marine miles of any of the coasts, bays, creeks or harbours of His Britannic Majesty's Dominions in America." It is well known that the negotiators of the Treaty of 1783 gave a very different meaning to the terms *liberty* and *right*, as distinguished from each other. In this connection Mr. Adams' Journal may be recited. To this Journal the British Counter Case refers in the following terms: "From an entry in Mr. Adams' Journal it appears that he drafted an article by which he distinguished the *right* to take fish (both on the high seas and on the shores) and the *liberty* to take and cure fish on the land. But on the following day he presented to the British negotiators a draft in which he distinguishes between the "*right*" to take fish on the high seas, and the "*liberty*" to take fish on the "*coasts*," and to dry and cure fish on the land. * * * * The British Commissioner called attention to the distinction thus suggested by Mr. Adams and proposed that the word *liberty* should be applied to the privileges both on the water and on the land. Mr. Adams thereupon rose up and made a vehement protest, as is recorded in his Diary, against the suggestion that the United States enjoyed the fishing on the banks of Newfoundland by any other title than that of *right*." * * * * The application of the word *liberty* to the coast fishery was left as Mr. Adams proposed." "The incident, proceeds the British Case, is of importance, since it shows that the difference between the two phrases was intentional." (British Counter Case, page 17.) And the British Argument emphasizes again the difference. "More cogent still is the distinction between the words *right* and *liberty*. The word *right* is applied to the sea fisheries, and the word *liberty* to the shore fisheries. The history of the negotiations shows that this distinction was advisedly adopted." If then a *liberty* is a grant and not the recognition of a *right*; if, as the British Case, Counter Case and Argument recognize, the United States had the right to fish in the open sea in contradistinction with the *liberty* to fish near the shores or portions of the shores, and if what has been

renounced in the words of the treaty is the "*liberty*" to fish on, or within three miles of the bays, creeks and harbours of His Britannic Majesty's Dominions, it clearly follows that such *liberty* and the corresponding renunciation refers only to such portions of the bays which were under the sovereignty of Great Britain and not to such other portions, if any, as form part of the high seas.

And thus it appears that far from being immaterial the territoriality of bays is of the utmost importance. The treaty not containing any rule or indication upon the subject, the Tribunal cannot help a decision as to this point, which involves the second branch of the British contention that all so-called bays are not only geographical but wholly territorial as well, and subject to the jurisdiction of Great Britain. The situation was very accurately described on almost the same lines as above stated by the British Memorandum sent in 1870 by the Earl of Kimberley to Governor Sir John Young: "The right of Great Britain to exclude American fishermen from waters within three miles of the coasts is unambiguous, and, it is believed, uncontested. But there appears to be some doubt what are the waters described as within three miles of bays, creeks or harbours. When a bay is less than six miles broad its waters are within the three mile limit, and therefore clearly within the meaning of the treaty; *but when it is more than that breadth, the question arises whether it is a bay of Her Britannic Majesty's Dominions.* This is a question which has to be considered in each particular case with regard to international law and usage. When such a bay is not a bay of Her Majesty's dominions, the American fishermen shall be entitled to fish in it, except within three marine miles of the 'coast'; when it is a bay of Her Majesty's dominions they will not be entitled to fish within three miles of it, that is to say (it is presumed) within three miles of a line drawn from headland to headland." (American Case Appendix, page 629.)

Now, it must be stated in the first place that there does not seem to exist any general rule of international law which may be considered final, even in what refers to the marginal belt of territorial waters. The old rule of the cannon-shot, crystallized into the present three marine miles measured from low water mark, may be modified at a later period inasmuch as certain nations claim a wider

jurisdiction and an extension has already been recommended by the Institute of International Law. There is an obvious reason for that. The marginal strip of territorial waters based originally on the cannon-shot, was founded on the necessity of the riparian State to protect itself from outward attack, by providing something in the nature of an insulating zone, which very reasonably should be extended with the accrued possibility of offense due to the wider range of modern ordnance. In what refers to bays, it has been proposed as a general rule (subject to certain important exceptions) that the marginal belt of territorial waters should follow the sinuosities of the coast more or less in the manner held by the United States in the present contention, so that the marginal belt being of three miles, as in the treaty under consideration, only such bays should be held as territorial as have an entrance not wider than six miles. (See Sir Thomas Barclay's Report to Institute of International Law, 1894, page 129, in which he also strongly recommends these limits.) This is the doctrine which Westlake, the eminent English writer on International Law, has summed up in very few words: "As to bays," he says, "if the entrance to one of them is not more than twice the width of the littoral sea enjoyed by the country in question, — that is, not more than six sea miles in the ordinary case, eight in that of Norway, and so forth — there is no access from the open sea to the bay except through the territorial water of that country, and the inner part of the bay will belong to that country no matter how widely it may expand. The line drawn from shore to shore at the part where, in approaching from the open sea, the width first contracts to that mentioned, will take the place of the line of low water, and the littoral sea belonging to the State will be measured outwards from that line to the distance of three miles or more, proper to the State"; (Westlake, Vol. 1, page 187.) But the learned author takes care to add: "But although this is the general rule it often meets with an exception in the case of bays which penetrate deep into the land and are called gulfs. Many of these are recognized by immemorial usage as territorial sea of the States into which they penetrate, notwithstanding that their entrance is wider than the general rule for bays would give as a limit for such appropriation." And he proceeds to quote as examples

of this kind the Bay of Conception in Newfoundland, which he considers as wholly British, Chesapeake and Delaware Bays, which belong to the United States, and others. (*Ibid.*, page 188.) The Institute of International Law, in its Annual Meeting of 1894, recommended a marginal belt of six miles for the general line of the coast and as a consequence established that for bays the line should be drawn up across at the nearest portion of the entrance toward the sea where the distance between the two sides does not exceed twelve miles. But the learned association very wisely added a proviso to the effect, "that bays should be so considered and measured *unless a continuous and established usage* has sanctioned a greater breadth." Many great authorities are agreed as to that. Counsel for the United States proclaimed the right to the exclusive jurisdiction of certain bays, no matter what the width of their entrance should be, when the littoral nation has asserted its right to take it into their jurisdiction upon reasons which go always back to the doctrine of protection. Lord Blackburn, one of the most eminent of English Judges, in delivering the opinion of the Privy Council about Conception Bay in Newfoundland, adhered to the same doctrine when he asserted the territoriality of that branch of the sea, giving as a reason for such finding "that the British Government for a long period had exercised dominion over this bay and its claim had been acquiesced in by other nations, so as to show that the bay had been for a long time occupied exclusively by Great Britain, a circumstance which, in the tribunals of any country, would be very important." "And moreover," he added, "the British Legislature has, by Acts of Parliament, declared it to be part of the British territory, and part of the country made subject to the legislation of Newfoundland." (Direct U. S. Cable Co. v. The Anglo-American Telegraph Co., Law Reports, 2 Appeal Cases, 374.)

So it may be safely asserted that a certain class of bays, which might be properly called the historical bays such as Chesapeake Bay and Delaware Bay in North America and the great estuary of the River Plate in South America, form a class distinct and apart and undoubtedly belong to the littoral country, whatever be their depth of penetration and the width of their mouths, when such country has asserted its sovereignty over them, and particular

circumstances such as geographical configuration, immemorial usage and above all, the requirements of self-defense, justify such a pretension. The right of Great Britain over the bays of Conception, Chaleur and Miramichi are of this description. In what refers to the other bays, as might be termed the common, ordinary bays, indenting the coasts, over which no special claim or assertion of sovereignty has been made, there does not seem to be any other general principle to be applied than the one resulting from the custom and usage of each individual nation as shown by their treaties and their general and time honored practice.

The well known words of Bynkershoek might be very appropriately recalled in this connection when so many and divergent opinions and authorities have been recited: "The common law of nations," he says, "can only be learnt from reason and custom. I do not deny that authority may add weight to reason, but I prefer to seek it in a constant custom of concluding treaties in one sense or another and in examples that have occurred in one country or another." (*Questiones Juris Publici*, Vol. I, Cap. 3.)

It is to be borne in mind in this respect that the Tribunal has been called upon to decide as the subject matter of this controversy, the construction to be given to the fishery Treaty of 1818 between Great Britain and the United States. And so it is that from the usage and the practice of Great Britain in this and other like fisheries and from Treaties entered into by them with other nations as to fisheries, may be evolved the right interpretation to be given to the particular convention which has been submitted. In this connection the following Treaties may be recited:

Treaty between Great Britain and France. 2nd August, 1839. It reads as follows:

Article IX. The subjects of Her Britannic Majesty shall enjoy the exclusive right of fishery within the distance of 3 miles from low water mark along the whole extent of the coasts of the British Islands.

It is agreed that the distance of three miles fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries, shall, with respect to bays, the mouths of which do not

exceed ten miles in width, be measured from a straight line drawn from headland to headland.

Article X. It is agreed and understood, that the miles mentioned in the present Convention are geographical miles, whereof 60 make a degree of latitude.

(Hertslet's Treaties and Conventions, Vol. V, p. 89.)

Regulations between Great Britain and France. 24th May, 1843.

Art. II. The limits, within which the general right of fishery is exclusively reserved to the subjects of the two kingdoms respectively, are fixed (with the exception of those in Granville Bay) at 3 miles distance from low water mark.

With respect to bays, the mouths of which do not exceed ten miles in width, the 3 mile distance is measured from a straight line drawn from headland to headland.

Art. III. The miles mentioned in the present regulations are geographical miles, of which 60 make a degree of latitude.

(Hertslet, Vol. VI, p. 416.)

Treaty between Great Britain and France. November 11, 1867.

Art. I. British fishermen shall enjoy the exclusive right of fishery within the distance of 3 miles from low water mark, along the whole extent of the coasts of the British Islands.

The distance of 3 miles fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries shall, with respect to bays, the mouths of which do not exceed ten miles in width be measured from a straight line drawn from headland to headland.

The miles mentioned in the present convention are geographical miles whereof 60 make a degree of latitude.

(Hertslet's Treaties, Vol. XII, p. 1126, British Case App. p. 38.)

Great Britain and North German Confederation. British notice to fishermen by the Board of Trade. Board of Trade, November 1868.

Her Majesty's Government and the North German Confederation having come to an agreement respecting the regulations to be observed by British fishermen fishing off the coasts of the North German Confederation, the following notice is issued for the guidance and warning of British fishermen :

1. The exclusive fishery limits of the German Empire are designated by the Imperial Government as follows: that tract of the sea which extends to a distance of 3 sea miles from the extremest limits which the ebb leaves dry of the German North Sea Coast of the German Islands or flats lying before it, as well as those bays and incurvations of the coast which are ten sea miles or less in breadth reckoned from the extremest points of the land and the flats, must be considered as under the territorial sovereignty of North Germany. (Hertslet's Treaties, Vol. XIV, p. 1055.)

Great Britain and German Empire. British Board of Trade, December 1874.

(Same recital referring to an arrangement entered into between Her Britannic Majesty and the German Government.)

Then the same articles follow with the alteration of the words "German Empire" for "North Germany."

(Hertslet, Vol. XIV, p. 1058.)

Treaty between Great Britain, Belgium, Denmark, France, Germany and the Netherlands for regulating the police of the North Sea Fisheries, May 6, 1882.

II. Les pêcheurs nationaux jouiront du droit exclusif de pêche dans le rayon de 3 milles, à partir de la laisse de basse mer, le long de toute l'étendue des côtes de leurs pays respectifs, ainsi que des îles et des bancs qui en dépendent.

Pour les baies le rayon de 3 milles sera mesuré à partir d'une ligne droite, tirée, en travers de la baie, dans la partie la plus rapprochée de l'entrée, au premier point où l'ouverture n'excèdera pas 10 milles.

(Hertslet, Vol. XV, p. 794.)

British Order in Council, October 23rd, 1877.

Prescribes the obligation of not concealing or effacing numbers or marks on boats, employed in fishing or dredging for purposes of sale on the coasts of England, Wales, Scotland and the Islands of Guernsey, Jersey, Alderney, Sark and Man, and not going outside;

(a) The distance of 3 miles from low water mark along the whole extent of the said coasts;

(b) In cases of bays less than 10 miles wide the line joining the headlands of said bays.
(Hertslet, Vol. XIV, p. 1032.)

To this list may be added the unratified Treaty of 1888 between Great Britain and the United States which is so familiar to the Tribunal. Such unratified treaty contains an authoritative interpretation of the Convention of October 20th, 1818, *sub judice*: "The three marine miles mentioned in Article I of the Convention of October 20th, 1818, shall be measured seaward from low-water mark; but at every bay, creek or harbor, not otherwise specifically provided for in this treaty, such three marine miles shall be measured seaward from a straight line drawn across the bay, creek or harbor, in the part nearest the entrance at the first point where the width does not exceed ten marine miles," which is recognizing the exceptional bays as aforesaid and laying the rule for the general and common bays.

It has been suggested that the Treaty of 1818 ought not to be studied as hereabove in the light of any treaties of a later date, but rather be referred to such British international Conventions as preceded it and clearly illustrate, according to this view, what were, at the time, the principles maintained by Great Britain as to their sovereignty over the sea and over the coast and the adjacent territorial waters. In this connection the Treaties of 1686 and 1713 with France and of 1763 with France and Spain have been recited and offered as examples also of exclusion of nations by agreement from fishery rights on the high seas. I cannot partake of such a view. The Treaties of 1686, 1713 and 1763 can hardly be understood with respect to this, otherwise than as examples of the wild, obsolete claims over the common ocean which all nations have of old abandoned with the progress of an enlightened civilization. And if certain nations accepted long ago to be excluded by convention from fishing on what is to-day considered a common sea, it is precisely because it was then understood that such tracts of water, now free and open to all, were the exclusive property of a particular power, who, being the owners, admitted or excluded others from their use. The Treaty of 1818 is in the meantime one of the

few which mark an era in the diplomacy of the world. As a matter of fact it is the very first which commuted the rule of the cannon-shot into the three marine miles of coastal jurisdiction. And it really would appear unjustified to explain such an historic document by referring it to international agreements of a hundred and two hundred years before when the doctrine of Selden's *Mare Clausum* was at its height and when the coastal waters were fixed at such distances as sixty miles, or a hundred miles, or two days' journey from the shore and the like. It seems very appropriate, on the contrary, to explain the meaning of the Treaty of 1818 by comparing it with those which immediately followed and established the same limit of coastal jurisdiction. As a general rule a treaty of a former date may be very safely construed by referring it to the provisions of like treaties made by the same nation on the same matter at a later time. Much more so when, as occurs in the present case, the later conventions, with no exception, starting from the same premise of the three miles coastal jurisdiction arrive always to an uniform policy and line of action in what refers to bays. As a matter of fact all authorities approach and connect the modern fishery treaties of Great Britain and refer them to the Treaty of 1818. The second edition of Kluber, for instance, quotes in the same sentence the Treaties of October 20th, 1818, and August 2, 1839, as fixing a distance of three miles from low water mark for coastal jurisdiction. And Fiori, the well-known Italian jurist, referring to the same marine miles of coastal jurisdiction, says: "This rule recognized as early as the Treaty of 1818 between the United States and Great Britain, and that between Great Britain and France in 1839, has again been admitted in the treaty of 1867." (Nouveau Droit International Public, Paris, 1885, Section 803.)

This is only a recognition of the permanency and the continuity of States. The Treaty of 1818 is not a separate fact unconnected with the later policy of Great Britain. Its negotiators were not parties to such international Convention and their powers disappeared as soon as they signed the document on behalf of their countries. The parties to the Treaty of 1818 were the United States and Great Britain, and what Great Britain meant in 1818 about bays and fisheries, when they for the first time fixed a marginal

jurisdiction of three miles, can be very well explained by what Great Britain, the same permanent political entity, understood in 1839, 1843, 1867, 1874, 1878 and 1882, when fixing the very same zone of territorial waters. That a bay in Europe should be considered as different from a bay in America and subject to other principles of international law cannot be admitted in the face of it. What the practice of Great Britain has been outside the treaties is very well known to the Tribunal, and the examples might be multiplied of the cases in which that nation has ordered its subordinates to apply to the bays on these fisheries the ten mile entrance rule or the six miles according to the occasion. It has been repeatedly said that such have been only relaxations of the strict right, assented to by Great Britain in order to avoid friction on certain special occasions. That may be. But it may also be asserted that such relaxations have been very many and that the constant, uniform, never contradicted, practice of concluding fishery treaties from 1839 down to the present day, in all of which the ten miles entrance bays are recognized, is the clear sign of a policy. This policy has but very lately found a most public, solemn and unequivocal expression. "On a question asked in Parliament on the 21st of February 1907, says Pitt Cobbett, a distinguished English writer, with respect to the Moray Firth Case, it was stated that, according to the view of the Foreign Office, the Admiralty, the Colonial Office, the Board of Trade and the Board of Agriculture and Fisheries, the term "territorial waters" was deemed to include waters extending from the coast line of any part of the territory of a State to three miles from the low-water mark of such coast line and the waters of all bays, the entrance to which is not more than *six miles*, and of which the entire land boundary forms part of the territory of the same state. (Pitt, Cobbett Cases and Opinions on International Law, Vol. 1, p. 143.)

Is there a contradiction between these six miles and the ten miles of the treaties just referred to? Not at all. The six miles are the consequence of the three miles marginal belt of territorial waters in their coincidence from both sides at the inlets of the coast and the ten miles far from being an arbitrary measure are simply an *extension*, a margin given for convenience to the strict six miles

with fishery purposes. Where the miles represent sixty to a degree in latitude the ten miles are besides the sixth part of the same degree. The American Government in reply to the observations made to Secretary Bayard's Memorandum of 1888, said very precisely: "The width of ten miles was proposed not only because it had been followed in conventions between many other powers, but also because it was deemed reasonable and just in the present case; this Government recognizing the fact that while it might have claimed a width of six miles as a basis of settlement, fishing within bays and harbors only slightly wider would be confined to areas so narrow as to render it practically valueless and almost necessarily expose the fishermen to constant danger of carrying their operations into forbidden waters." (British Case Appendix, page 416.) And Professor John Bassett Moore, a recognized authority on international law, in a communication addressed to the Institute of International law, said very forcibly: "Since you observe that there does not appear to be any convincing reason to prefer the ten mile line in such a case to that of double three miles, I may say that there have been supposed to exist reasons both of convenience and of safety. The ten mile line has been adopted in the cases referred to as a practical rule. The transgression of an encroachment upon territorial waters by fishing vessels is generally a grave offense, involving in many instances the forfeiture of the offending vessel, and it is obvious that the narrower the space in which it is permissible to fish the more likely the offense is to be committed. In order, therefore, that fishing may be practicable and safe and not constantly attended with the risk of violating territorial waters, it has been thought to be expedient not to allow it where the extent of free waters between the three miles drawn on each side of the bay is less than four miles. This is the reason of the ten mile line. Its intention is not to hamper or restrict the right to fish, but to render its exercise practicable and safe. When fishermen fall in with a shoal of fish, the impulse to follow it is so strong as to make the possibilities of transgression very serious within narrow limits of free waters. Hence it has been deemed wiser to exclude them from space less than four miles each way from the forbidden lines. In spaces less than this operations are not only hazardous, but so

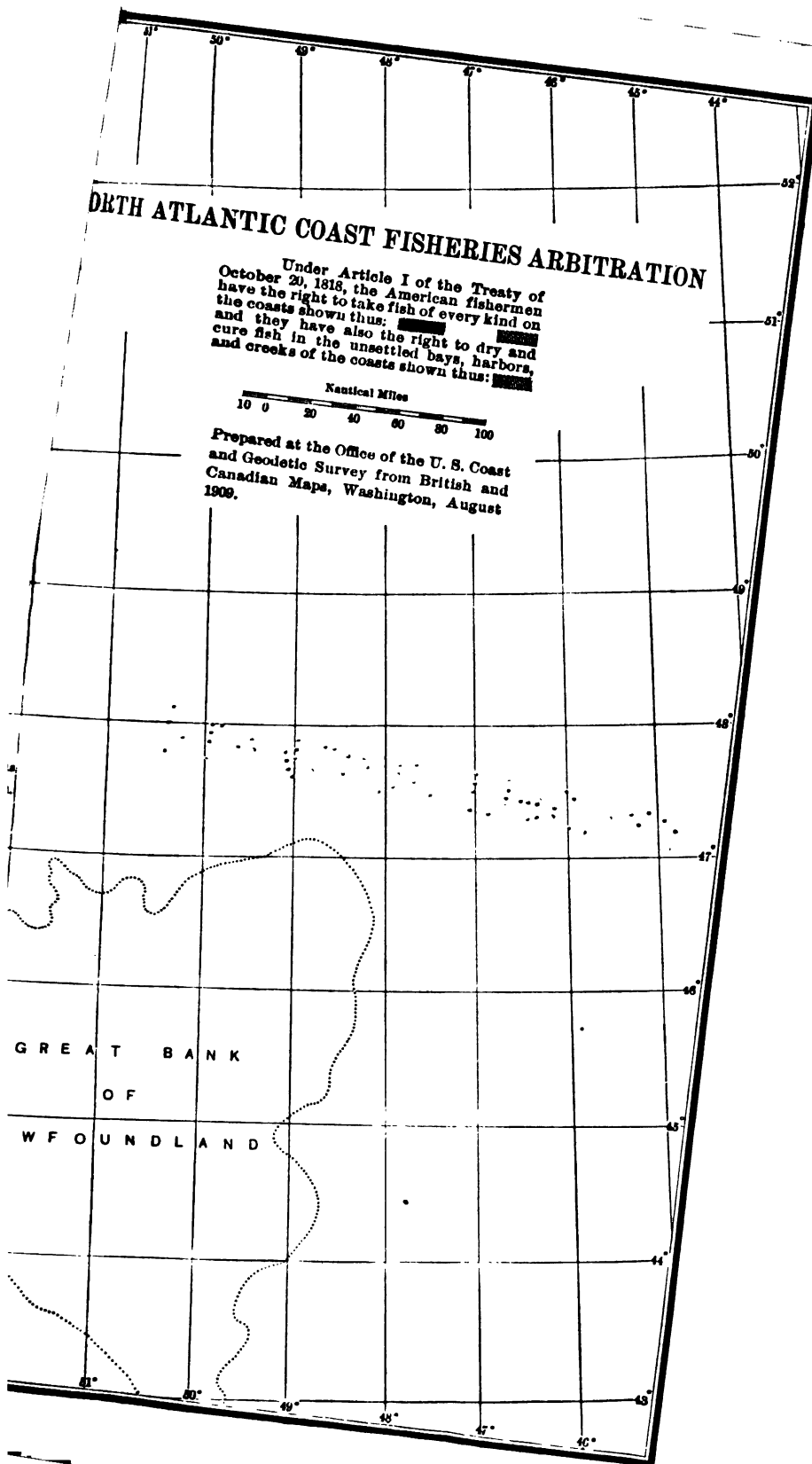
ORTH ATLANTIC COAST FISHERIES ARBITRATION

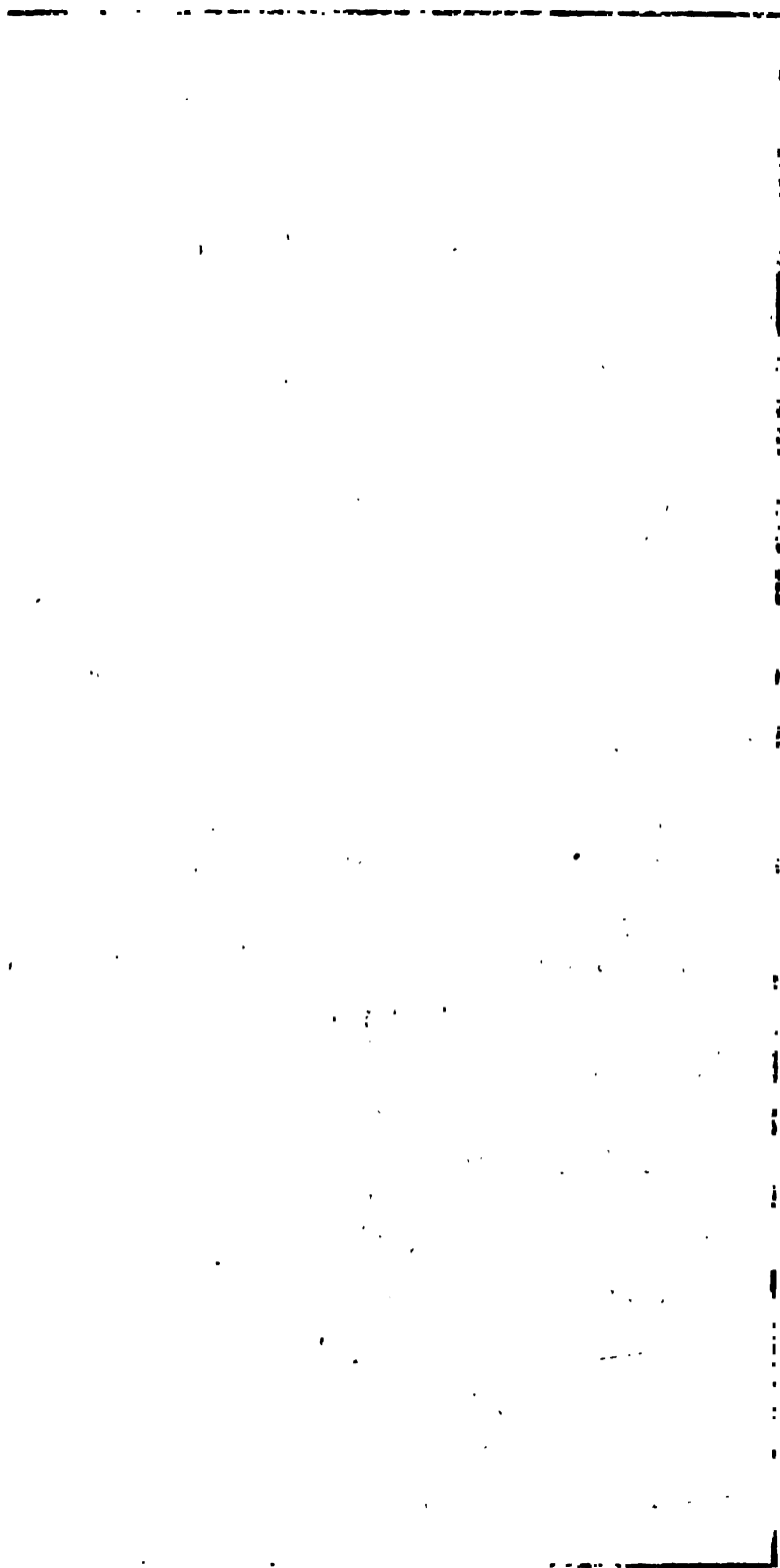
Under Article I of the Treaty of October 20, 1818, the American fishermen have the right to take fish of every kind on the coasts shown thus: [redacted] and they have also the right to dry and cure fish in the unsettled bays, harbors, and creeks of the coasts shown thus: [redacted]



Prepared at the Office of the U. S. Coast and Geodetic Survey from British and Canadian Maps, Washington, August 1909.

G R E A T B A N K
O F
W F O U N D L A N D





circumscribed as to render them of little practical value." (*Annuaire de l'Institut de Droit International*, 1894, p. 146.)

So the use of the ten mile bays so constantly put into practice by Great Britain in its fishery treaties has its root and connection with the marginal belt of three miles for the territorial waters. So much so that the Tribunal having decided not to adjudicate in this case the ten miles entrance to the bays of the treaty of 1818, this will be the only one exception in which the ten miles of the bays do not follow as a consequence the strip of three miles of territorial waters, the historical bays and estuaries always excepted.

And it is for that reason that an usage so firmly and for so long a time established ought, in my opinion, be applied to the construction of the treaty under consideration, much more so, when custom, one of the recognized sources of law, international as well as municipal, is supported in this case by reason and by the acquiescence and the practice of many nations.

The Tribunal has decided that: "In case of bays the 3 miles (of the treaty) are to be measured from a straight line drawn across the body of water at the place where it ceases to have the configuration characteristic of a bay. At all other places the three miles are to be measured following the sinuosities of the coast." But no rule is laid out or general principle evolved for the parties to know what the nature of such configuration is or by what methods the points should be ascertained from which the bay should lose the characteristics of such. There lies the whole contention and the whole difficulty, not satisfactorily solved, to my mind, by simply recommending, without the scope of the award and as a system of procedure for resolving future contestations under Article IV of the Treaty of Arbitration, a series of lines, which practical as they may be supposed to be, cannot be adopted by the Parties without concluding a new treaty.

These are the reasons for my dissent, which I much regret, on Question Five.

Done at The Hague, September 7th, 1910.

LUIS M. DRAGO

VIII

UNITED STATES AND VENEZUELA

ORINOCO STEAMSHIP COMPANY

COMPROMIS, FEBRUARY 13, 1909

SESSIONS, SEPTEMBER 28, 1910-OCTOBER 19, 1910, THE HAGUE

AWARD, OCTOBER 25, 1910

ARBITRATORS, LAMMASCH, BEERNAERT, DE QUESADA

PROTOCOL OF AN AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED STATES OF VENEZUELA FOR THE DECISION AND ADJUSTMENT OF CERTAIN CLAIMS, SIGNED AT CARACAS ON FEBRUARY 13, 1909

William I. Buchanan, High Commissioner, representing the President of the United States of America, and Doctor Francisco González Guinán, Minister for Foreign Affairs of the United States of Venezuela, duly authorized by General Juan Vicente Gómez, Vice-President of the United States of Venezuela, in charge of the Presidency of the Republic, having exhibited to each other and found in due form their respective powers, and animated by the spirit of sincere friendship that has always existed and should exist between the two nations they represent, having conferred during repeated and lengthy conferences concerning the manner of amicably and equitably adjusting the differences existing between their respective Governments with regard to the claims pending between them since neither the United States of America nor the United States of Venezuela aspires to anything other than sustaining that to which in justice and equity it is entitled; and as a result of these conferences have recognized the great importance of arbitration as a means toward maintaining the good understanding which should

exist and increase between their respective nations, and to the end of avoiding hereafter, so far as possible, differences between them, they believe it is from every point of view desirable that a treaty or arbitration shall be adjusted between their respective Governments.

With respect to the claims that have been the subject of their long and friendly conferences, William I. Buchanan and Doctor Francisco González Guinán have found that the opinions and views concerning them sustained by their respective Governments have been, and are, so diametrically opposed and so different that they have found it difficult to adjust them by common accord; wherefore it is necessary to resort to the conciliatory means of arbitration, a measure to which the two nations they represent are mutually bound by their signatures to the treaties of the Second Peace Conference at The Hague in 1907, and one which is recognized by the entire civilized world as the only satisfactory means of terminating international disputes.

Being so convinced, and firm in their resolution not to permit, for any reason whatever, the cordiality that has always existed between their respective countries to be disturbed, the said William I. Buchanan and Doctor Francisco González Guinán, thereunto fully authorized, have adjusted, agreed to and signed the present Protocol for the settlement of the said claims against the United States of Venezuela, which are as follows :

1. The claim of the United States of America on behalf of the Orinoco Steamship Company ;
2. The claim of the United States of America on behalf of the Orinoco Corporation and of its predecessors in interest, The Manoa Company Limited, The Orinoco Company and The Orinoco Company Limited ; and,
3. The claim of the United States of America on behalf of the United States and Venezuela Company, also known as the Crichfield claim.

ARTICLE I

With respect to the first of these claims, that of the Orinoco Steamship Company, the United States of Venezuela has upheld

the immutability of the arbitral decision of Umpire Barge, rendered in this case, alleging that said decision does not suffer from any of the causes which by universal jurisprudence give rise to its nullity, but rather that it is of an unappealable character, since the COMPROMIS of arbitration cannot be considered as void, nor has there been an excessive exercise of jurisdiction, nor can the corruption of the judges be alleged, nor an essential error in the judgment; while on the other hand, the United States of America, citing practical cases, among them the case of the revision, with the consent of the United States of America, of the arbitral awards rendered by the American-Venezuelan Mixed Commission created by the Convention of April 25, 1866, and basing itself on the circumstances of the case, considering the principles of international law and of universal jurisprudence, has upheld not only the admissibility but the necessity of the revision of said award; in consequence of this situation, William I. Buchanan and Doctor Francisco González Guinán, in the spirit that has marked their conferences, have agreed to submit this case to the elevated criterion of the Arbitral Tribunal created by this Protocol, in the following form:

The Arbitral Tribunal shall first decide whether the decision of Umpire Barge, in this case, in view of all the circumstances and under the principles of international law, is not void, and whether it must be considered so conclusive as to preclude a reexamination of the case on its merits. If the Arbitral Tribunal decides that said decision must be considered final, the case will be considered by the United States of America as closed; but on the other hand, if the Arbitral Tribunal decides that said decision of Umpire Barge should not be considered as final, said Arbitral Tribunal shall then hear, examine and determine the case and render its decision on the merits.

ARTICLE II

During the many conferences regarding the matter of the United States of America on behalf of the Orinoco Corporation and of its predecessors in interest against the United States of Venezuela, held between William I. Buchanan, High Commissioner, representing the President of the United States of America, and Doctor Francisco González Guinán, Minister for Foreign Affairs of Venezuela, they

have found the views and conclusions held and maintained by their respective Governments with respect to the rights and claims of the claimant company so diametrically opposed to each other, as to make it impossible to reconcile them through the medium of direct negotiations between their Governments.

Among these they have encountered the allegation of the United States of America, on behalf of the claimant company, that by the act of the National Congress of Venezuela, and by resolutions and other acts of the Executive Power thereof, the rights and claims insisted upon and claimed by the United States of America on behalf of the claimant company, in and under the Fitzgerald concession, the origin of the present case, are firmly recognized and affirmed as subsistent and valid, and that the Government of Venezuela has insisted and insists that the decision of Umpire Barge of April 12, 1904, which Venezuela considers irrevocable, and the decision handed down by the Federal Court and of Cassation of Venezuela on March 18, 1908, furnish of and in themselves conclusive proof against the rights and the pretensions of the claimant company, since said company, even though it be accepted as the assignee of the others, has not established itself in accordance with the laws of Venezuela, and even though it had so established itself, it was beforehand subjected to Venezuelan laws and it was agreed that these should govern and decide the contentions and differences that might arise; whereas the United States of America, on behalf of the claimant company, has declined and declines in any manner to admit that said decision of Umpire Barge or that of the Federal Court and of Cassation of Venezuela could terminate or has terminated or extinguished the rights and claims asserted by the claimant company under said Fitzgerald contract, but that on the contrary the rights and claims asserted in connection therewith by the claimant company are valid and subsisting.

In view of these and other equally conflicting conclusions reached and persistently maintained by their respective Governments with regard to this case, the Representatives herein named, animated by a firm resolve to do all in their power to maintain and increase a good understanding between their Governments, and by a fixed desire to provide for the adjustment of the differences existing between

them in this case, in justice and equity, can not escape the conclusion that the same cordial spirit which has prevailed in their many conferences already held counsels and points to the expediency and necessity of submitting this case to an impartial International Tribunal in order that the differences arising therefrom may be once and for all determined and concluded in a just and equitable manner. To reach this desirable end, and in accordance with the principles set out :

It is agreed between William I. Buchanan, High Commissioner, representing the President of the United States of America, and Doctor Francisco González Guinán, Minister for Foreign Affairs of the United States of Venezuela, duly authorized to this end by their respective Governments, that the matter of the United States of America, on behalf of the Orinoco Corporation and of its predecessors in interest, The Manoa Company Limited, The Orinoco Company and The Orinoco Company Limited, shall be submitted to the Arbitral Tribunal created by this Protocol.

Said Arbitral Tribunal shall examine and decide :

1. Whether the decision of the Umpire Barge of April 12, 1904, under the principles of international law is not void and whether it preserves a conclusive character, in the case of the predecessors in interest of the claimant company against Venezuela ;
2. If the Arbitral Tribunal decides that said decision shall be considered conclusive, it shall then decide what effect said decision had with respect to the subsistence of the Fitzgerald contract, at that date, and with respect to the rights of the claimant company or those of its predecessors in interest in said contract ;
3. If it decided that the decision of said Umpire Barge shall not be considered conclusive, said Arbitral Tribunal shall examine on their merits and shall decide the matters submitted to said Umpire by the predecessors in interest of the claimant company ;
4. The Arbitral Tribunal shall examine, consider and decide whether there has been manifest injustice done the claimant company or its predecessors in interest regarding the Fitzgerald contract through the decision of the Federal Court and of Cassation, rendered March 18, 1908, in the suit maintained by the Government of Venezuela against the predecessors in interest of the claim-

ant company, or through any of the acts of any of the authorities of the Government of Venezuela.

If the Arbitral Tribunal decides that such injustice has been done, it is empowered to examine the matter of the claimant company and of its predecessors in interest against the Government of Venezuela on its merits, and to render a final decision with respect to the rights and the obligations of the parties, fixing such damages as in its elevated judgment it believes to be just and equitable.

In every event the Arbitral Tribunal shall decide:

(a) What effect, if any, said decision of the Federal Court and of Cassation produced and has upon everything relating to the rights of the claimant company as assignee of the Fitzgerald contract;

(b) Whether said Fitzgerald contract is in force; and

(c) If it determines that said contract is in force, then, what are the rights and the obligations of the claimant company on the one hand, and of the Government of Venezuela on the other.

ARTICLE III

William I. Buchanan, High Commissioner, representing the President of the United States of America, and Doctor Francisco González Guinán, Minister for Foreign Affairs of the United States of Venezuela, have carefully considered in the conferences they have held, the matter of the United States of America on behalf of the United States and Venezuela Company against the United States of Venezuela, also known as the Crichfield case, and have found that while the questions involved therein differ in several aspects from those in the other claims they have considered, the same radically different views held by their respective Governments in those cases exist in the case under consideration.

To the end therefore, that nothing shall be left pending that will not tend to add to the good understanding and friendship existing between the two Governments, their Representatives above-named, William I. Buchanan and Doctor Francisco González Guinán hereby agree that the matter of the United States of America on behalf of the United States and Venezuela Company against the United States of Venezuela shall be submitted to the Arbitral Tribunal created by this Protocol, and they further agree that said

Tribunal is empowered to examine, consider, hear, determine and make its award in said case on its merits in justice and equity.

ARTICLE IV

The United States of America and the United States of Venezuela having, at the Second Peace Conference held at The Hague in 1907, accepted and recognized the permanent court of The Hague, it is agreed that the cases mentioned in Articles I, II and III of this Protocol, that is to say, the case of the Orinoco Steamship Company, that of the Orinoco Corporation and of its predecessors in interest and that of the United States and Venezuela Company, shall be submitted to the jurisdiction of an Arbitral Tribunal composed of Three Arbitrators chosen from the above-mentioned Permanent Court of The Hague.

No member of said Court who is a citizen of the United States of America or of the United States of Venezuela shall form part of said Arbitral Tribunal, and no member of said Court can appear as counsel for either nation before said Tribunal.

This Arbitral Tribunal shall sit at The Hague.

ARTICLE V

The said Arbitral Tribunal shall, in each case submitted to it, determine, decide and make its award, in accordance with justice and equity. Its decisions in each case shall be accepted and upheld by the United States of America and the United States of Venezuela as final and conclusive.

ARTICLE VI

In the presentation of the cases to the Arbitral Tribunal both parties may use the French, English or Spanish language.

ARTICLE VII

Within eight months from the date of this Protocol, each of the parties shall present to the other and to each of the members of the Arbitral Tribunal, two printed copies of its case, with the documents and evidence on which it relies, together with the testimony of its respective witnesses.

Within an additional term of four months, either of the Parties may in like manner present a counter case with documents and additional evidence and depositions, in answer to the case, documents, evidence and depositions of the other party.

Within sixty days from the expiration of the time designated for the filing of the counter cases, each Government may, through its Representative, make its arguments before the Arbitral Tribunal, either orally or in writing, and each shall deliver to the other copies of any arguments thus made in writing, and each party shall have a right to reply in writing, provided such reply be submitted within the sixty days last named.

ARTICLE VIII

All public records and documents under the control or at the disposal of either Government or in its possession, relating to the matters in litigation shall be accessible to the other, and, upon request, certified copies of them shall be furnished. The documents which each party produces in evidence shall be authenticated by the respective Minister for Foreign Affairs.

ARTICLE IX

All pecuniary awards that the Arbitral Tribunal may make in said cases shall be in gold coin of the United States of America, or in its equivalent in Venezuelan money, and the Arbitral Tribunal shall fix the time of payment, after consultation with the Representatives of the two countries.

ARTICLE X

It is agreed that within six months from the date of this Protocol the Government of the United States of America and that of the United States of Venezuela shall communicate to each other, and to the Bureau of the Permanent Court at The Hague, the name of the Arbitrator they select from among the members of the Permanent Court of Arbitration.

Within sixty days thereafter the Arbitrators shall meet at The Hague and proceed to the choice of the Third Arbitrator in accordance with the provisions of Article 45 of the Hague Convention for the Peaceful Settlement of International Disputes, referred to herein.

Within the same time each of the two Governments shall deposit with the said Bureau the sum of fifteen thousand francs on account of the expenses of the arbitration provided for herein, and from time to time thereafter they shall in like manner deposit such further sums as may be necessary to defray said expenses.

The Arbitral Tribunal shall meet at The Hague twelve months from the date of this Protocol to begin its deliberations and to hear the arguments submitted to it. Within sixty days after the hearings are closed its decisions shall be rendered.

ARTICLE XI

Except as provided in this Protocol the arbitral procedure shall conform to the provisions of the Convention for the Peaceful Settlement of International Disputes, signed at The Hague on October 18, 1907, to which both parties are signatory, and especially to the provisions of Chapter III thereof.

ARTICLE XII

It is hereby understood and agreed that nothing herein contained shall preclude the United States of Venezuela, during the period of five months from the date of this Protocol, from reaching an amicable adjustment with either or both of the claimant companies referred to in Articles II and III herein, provided that in each case wherein a settlement may be reached, the respective company shall first have obtained the consent of the Government of the United States of America.

The undersigned, William I. Buchanan and Francisco Gonzáles Guinán, in the capacity which each holds, thus consider their conferences with respect to the differences between the United States of America and the United States of Venezuela as closed, and sign two copies of this Protocol of the same tenor and to one effect, in both the English and Spanish languages, at Caracas, on the thirteenth day of February one thousand nine hundred and nine.

WILLIAM I. BUCHANAN (*Seal*)
F. GONZÁLEZ GUINÁN (*Seal*)

SENTENCE¹ DU TRIBUNAL D'ARBITRAGE, CONSTITUÉ EN VERTU DU
COMPROMIS SIGNÉ À CARACAS LE 13 FÉVRIER 1909 ENTRE LES
ETATS-UNIS D'AMÉRIQUE ET LES ETATS-UNIS DU VÉNEZUELA

Par un Compromis signé à Caracas le 13 février 1909, les Etats-Unis d'Amérique et du Vénézuëla se sont mis d'accord pour soumettre à un Tribunal arbitral, composé de trois Arbitres choisis parmi les Membres de la Cour permanente d'Arbitrage, une réclamation des Etats-Unis d'Amérique envers les Etats-Unis du Vénézuëla ;

Ce compromis porte :

„Le Tribunal arbitral décidera d'abord si la Sentence du Surarbitre Barge en cette affaire, en vue de toutes les circonstances et d'après les principes de droit international, n'est pas entachée de nullité et si elle doit être considérée comme concluante au point d'exclure un nouvel examen du cas sur le fond. Si le Tribunal arbitral décide que la dite Sentence doit être considérée comme définitive, l'affaire sera considérée par les Etats-Unis d'Amérique comme terminée ; mais si, par contre, le Tribunal arbitral décide que la dite Sentence du Surarbitre Barge ne doit pas être considérée comme définitive, le dit Tribunal arbitral devra alors entendre, examiner et résoudre l'affaire et rendre sa décision sur le fond ;”

En exécution du dit Compromis, les deux Gouvernements ont respectivement nommé Arbitres les Membres suivants de la Cour permanente d'Arbitrage :

Son Excellence Monsieur Gonzalo de Quesada, Envoyé extraordinaire et Ministre plénipotentiaire de Cuba à Berlin etc.

Son Excellence Monsieur A. Beernaert, Ministre d'Etat, Membre de la Chambre des Représentants Belge etc. ;

Et en vertu du dit Compromis, les Arbitres ainsi désignés ont nommé Surarbitre :

Monsieur H. Lammasch, Professeur à l'Université de Vienne, Membre de la Chambre des Seigneurs du Parlement Autrichien etc. ;

Les Mémoires, Contre-Mémoires et Conclusions ont été dûment soumis aux Arbitres et communiqués aux Parties ;

¹ In the protocols and award the French language was of "authentic value," but was to be accompanied by an official translation in English.

[Official Translation]

AWARD OF THE TRIBUNAL OF ARBITRATION, CONSTITUTED UNDER
AN AGREEMENT SIGNED AT CARACAS FEBRUARY 13TH 1909 BETWEEN
THE UNITED STATES OF AMERICA AND THE UNITED STATES OF
VENEZUELA

By an Agreement signed at Caracas the 13th of February 1909, the United States of America and of Venezuela have agreed to submit to a Tribunal of Arbitration, composed of three Arbitrators, chosen from the Permanent Court of Arbitration, a claim of the United States of America against the United States of Venezuela ;

This Agreement states :

“The Arbitral Tribunal shall first decide whether the decision of Umpire Barge, in this case, in view of all the circumstances and under the principles of international law, is not void, and whether it must be considered to be so conclusive as to preclude a reexamination of the case on its merits. If the Arbitral Tribunal decides that said decision must be considered final, the case will be considered by the United States of America as closed ; but on the other hand, if the Arbitral Tribunal decides that said decision of Umpire Barge should not be considered as final, the said Tribunal shall then hear, examine and determine the case and render its decisions on its merits” ;

In virtue of said Agreement, the two Governments respectively have named as Arbitrators the following Members of the Permanent Court of Arbitration :

His Excellency Gonzalo de Quesada, Envoy Extraordinary and Minister Plenipotentiary of Cuba at Berlin etc. ;

His Excellency A. Beernaert, Minister of State, Member of the Chamber of Representatives of Belgium etc. ;

And the Arbitrators so designated, in virtue of said Agreement, have named as Umpire :

Mr. H. Lammasch, Professor in the University of Vienna, Member of the Upper House of the Austrian Parliament etc. ;

The Cases, Countercases and Conclusions have been duly submitted to the Arbitrators and communicated to the Parties ;

Les Parties ont plaidé et répliqué; l'une et l'autre ont plaidé le fond en même temps que la question préalable et les débats ont été déclarés clos le 19 octobre 1910;

Sur quoi, le Tribunal après en avoir mûrement délibéré, rend la Sentence suivante:

Considérant qu'aux termes d'un Compromis en date du 17 février 1903 une Commission Mixte a été chargée de décider toutes les réclamations exercées (owned — poseidas) par des citoyens des Etats-Unis d'Amérique à l'encontre des Etats-Unis du Venezuela, qui n'auraient point été réglées par un accord diplomatique ou par un arbitrage entre les deux Gouvernements et qui seraient présentées par les Etats-Unis d'Amérique; un Surarbitre, à désigner par Sa Majesté la Reine des Pays-Bas, devait éventuellement trancher toute question sur laquelle les Commissaires seraient en désaccord par une décision définitive (final and conclusive — definitiva y concluyente);

Considérant que le Surarbitre ainsi désigné, M. Barge, a statué sous la date du 22 février 1904, sur les dites réclamations;

Considérant qu'il est assurément de l'intérêt de la paix et du développement de l'institution de l'arbitrage international si essentiel pour le bien-être des nations, qu'en principe semblable décision soit acceptée, respectée et exécutée par les Parties sans aucune réserve, ainsi qu'il est prescrit par l'article 81 de la Convention pour le règlement pacifique des conflits internationaux du 18 octobre 1907 que d'ailleurs, aucune juridiction n'est instituée pour reformer de semblables décisions;

Mais considérant que dans l'espèce, la sentence ayant été arguée de nullité, il est advenu entre les Parties, sous la date du 13 février 1909, un nouveau Compromis, d'après lequel, sans tenir compte du caractère définitif de la première sentence, ce Tribunal est appelé à décider, si la sentence du Surarbitre Barge, en vertu de toutes les circonstances et d'après les principes du droit international, n'est pas entachée de nullité et si elle doit être considérée comme concluante au point d'exclure un nouvel examen au fond;

Considérant que par le Compromis du 13 février 1909, les deux Parties admettent au moins implicitement, comme vices entraînant la nullité d'une sentence arbitrale, l'excès de pouvoir et l'erreur es-

The Parties have both pleaded and replied, both having pleaded the merits of the case, as well as the previous question, and the discussion was declared closed on October 19th 1910;

Upon which the Tribunal, after mature deliberation, pronounces as follows :

Whereas by the terms of an Agreement dated February 17th 1903, a Mixed Commission was charged with the decision of all claims owned (poseidas) by citizens of the United States of America against the Republic of Venezuela, which shall not have been settled by a diplomatic agreement or by arbitration between the two Governments and which shall have been presented by the United States of America; an Umpire, to be named by Her Majesty the Queen of the Netherlands, was eventually to give his final and conclusive decision (definitiva y concluyente) on any question upon which the Commissioners might not have been able to agree;

Whereas the Umpire thus appointed, Mr. Barge, has pronounced on the said claims on the 22nd of February 1904;

Whereas it is assuredly in the interest of peace and the development of the institution of International Arbitration, so essential to the well-being of nations, that on principle, such a decision be accepted, respected and carried out by the Parties without any reservation, as it is laid down in Article 81 of the Convention for the Pacific Settlement of International Disputes of October 18th 1907; and besides no jurisdiction whatever has been instituted for reconsidering similar decisions;

But whereas in the present case, it having been argued that the decision is void, the Parties have entered into a new Agreement under date of the 13th of February 1909, according to which, without considering the conclusive character of the first decision, this Tribunal is called upon to decide whether the decision of Umpire Barge, in virtue of the circumstances and in accordance with the principles of international law, be not void, and whether it must be considered so conclusive as to preclude a reexamination of the case on its merits;

Whereas by the Agreement of February 13th 1909, both Parties have at least implicitly admitted, as vices involving the nullity of an arbitral decision, excessive exercise of jurisdiction and essential

sentielle dans le jugement (excessive exercise of jurisdiction and essential error in the judgment — exceso de poder y error esencial en el fallo) ;

Considérant que la Partie demanderesse allègue l'excès de pouvoir et de nombreuses erreurs de droit et de fait équivalent à l'erreur essentielle ;

Considérant que, d'après les principes de l'équité d'accord avec le droit, lorsque une sentence arbitrale comporte divers chefs indépendants de demande et partant diverses décisions, la nullité éventuelle de l'une est sans influence quant aux autres et cela surtout lorsque, comme dans l'espèce l'intégrité et la bonne foi de l'arbitre ne sont pas en question ; qu'il y a donc lieu de statuer séparément sur chacun des points en litige ;

I. QUANT AUX 1.209.701,04 DOLLARS :

Considérant que ce Tribunal est appelé en premier lieu à décider si la sentence du Surarbitre est entachée de nullité et si elle doit être considérée comme concluante ; que dans le cas seulement où la sentence du Surarbitre serait déclarée nulle, le Tribunal aurait à statuer au fond ;

Considérant qu'il est allégué que le Surarbitre se serait écarté des termes du Compromis en relatant inexactement le contrat Grell et la prétention à laquelle celui-ci servait de base, et que par suite il serait tombé dans une erreur essentielle, mais que la sentence reproduit textuellement le dit contrat et dans son entière teneur ; qu'il est d'autant moins admissible que le Surarbitre en aurait mal compris le texte et aurait excédé sa compétence et décidé sur une réclamation qui ne lui était pas soumise, en méconnaissant la relation de la concession en question à la navigation extérieure, alors qu'il a décidé in terminis, que le permis de naviguer par ces canaux (Marcareo et Pedernales) était seulement ajouté au permis de toucher à Trinidad („when the permission to navigate these channels was only annexed to the permission to call at Trinidad”) ;

Considérant que l'appréciation des faits de la cause et l'interprétation des documents était de la compétence du Surarbitre et que ses décisions en tant qu'elles sont fondées sur pareille interprétation ne sont pas sujettes à être revisées par ce Tribunal, qui n'a pas la

error in the judgment (exceso de poder y error esencial en el fallo);

Whereas the plaintiff Party alleges excessive exercise of jurisdiction and numerous errors in law and fact equivalent to essential error;

Whereas, following the principles of equity in accordance with law, when an arbitral award embraces several independent claims, and consequently several decisions, the nullity of one is without influence on any of the others, more especially when, as in the present case, the integrity and the good faith of the Arbitrator are not questioned; this being ground for pronouncing separately on each of the points at issue;

I. AS REGARDS THE 1,209,701.04 DOLLARS:

Whereas this Tribunal is in the first place called upon to decide whether the Award of the Umpire is void, and whether it must be considered conclusive; and whereas this Tribunal would have to decide on the merits of the case only if the Umpire's Award be declared void;

Whereas it is alleged that the Umpire deviated from the terms of the Agreement by giving an inexact account of the Grell Contract and the claim based on it, and in consequence thereof fell into an essential error; but since the Award reproduces said contract textually and in its entire tenor;

Whereas it is scarcely admissible that the Umpire should have misunderstood the text and should have exceeded his authority by pronouncing on a claim which had not been submitted to him, by failing to appreciate the connection between the concession in question and exterior navigation, the Umpire having decided in terminis, that "the permission to navigate these channels was only annexed to the permission to call at Trinidad";

Whereas the appreciation of the facts of the case and the interpretation of the documents were within the competence of the Umpire and as his decisions, when based on such interpretation, are not subject to revision by this Tribunal, whose duty it is not to say if

mission de dire, s'il a été bien ou mal jugé, mais si le jugement doit être annulé; que si une sentence arbitrale pouvait être querellée du chef d'appréciation erronée, l'appel et la revision, que les Conventions de La Haye de 1899 et 1907 ont eu pour but d'écarter, seraient de règle générale;

Considérant que le point de vue sous lequel le Surarbitre a envisagé la demande des \$513.000 — plus tard réduite dans les conclusions des Etats-Unis d'Amérique à \$335.000 et partie de la prédite somme de \$1.209.701,04 — est la conséquence de son interprétation du contrat du 10 mai 1900 et de la relation de ce contrat au décret du même jour;

Considérant que la circonstance que le Surarbitre, ne se contentant pas d'avoir fondé sa sentence sur son interprétation des contrats, motif qui en lui-même doit être considéré comme suffisant, a invoqué subsidiairement d'autres raisons d'un caractère plutôt technique, ne peut pas vicier sa décision;

II. QUANT AUX 19.200 DOLLARS (100.000 BOLIVARES) :

Considérant que le Compromis du 17 février 1903 n'investissait pas les Arbitres d'un pouvoir discrétionnaire, mais les obligeait de rendre leur sentence sur la base de l'équité absolue sans tenir compte d'objections de nature technique ou de dispositions de la législation locale (con arreglo absoluto à la equidad, sin reparar en objeciones técnicas, ni en las disposiciones de la legislación local — upon a basis of absolute equity, without regard to objections of a technical nature, or to the provisions of local legislation);

Considérant que l'excès de pouvoir peut consister non seulement à décider une question non soumise aux Arbitres, mais aussi à méconnaître les dispositions impératives du Compromis quant à la voie d'après laquelle ils doivent arrêter leurs décisions, notamment en ce qui concerne la loi ou les principes de droit à appliquer;

Considérant que le rejet de la demande des 19.200 dollars n'est motivé que 1°. par l'absence de tout appel à la Justice Vénézuélienne et 2°. par le défaut de notification préalable de la cession au débiteur, „la circonstance qu'on pourrait se demander si le jour où cette réclamation fut enregistrée, la dette était exigible” nepouvant évidemment servir de justification au dit rejet;

the case has been well or ill judged, but whether the award must be annulled; that if an arbitral decision could be disputed on the ground of erroneous appreciation, appeal and revision, which the Conventions of The Hague of 1899 and 1907 made it their object to avert, would be the general rule;

Whereas the point of view from which the Umpire considered the claim of \$513,000, (afterwards reduced in the conclusions of the United States of America to \$335,000, and being part of the said sum of \$1,209,701.04), is the consequence of his interpretation of the contract of May 10th 1900 and of the relation between this contract and the decree of the same date;

Whereas the circumstance that the Umpire, not content to have based his Award on his interpretation of the contracts, which of itself should be deemed sufficient, has invoked other subsidiary reasons, of a rather more technical character, cannot vitiate his decision;

II. AS REGARDS THE 19,200 DOLLARS (100,000 BOLIVARES):

Whereas the Agreement of February 17th 1903 did not invest the Arbitrators with discretionary powers, but obliged them to give their decision on a basis of absolute equity without regard to objections of a technical nature, or to the provisions of local legislation (con arreglo absoluto à la equidad, sin reparar en objeciones técnicas, ni en las disposiciones de la legislación local);

Whereas excessive exercise of power may consist, not only in deciding a question not submitted to the Arbitrators, but also in misinterpreting the express provisions of the Agreement in respect of the way in which they are to reach their decisions, notably with regard to the legislation or the principles of law to be applied;

Whereas the only motives for the rejection of the claim for 19,200 dollars are: 1st. the absence of all appeal to the Venezuelan Courts of Justice, and 2nd. the omission of any previous notification of cession to the debtor, it being evident that "the circumstance that the question might be asked if on the day this claim was filed, this indebtedness was proved compellable," could not serve as a justification of rejection;

Considérant qu'il résulte des Compromis de 1903 et de 1909 — base du présent arbitrage — que les Etats-Unis du Venezuela avaient renoncé conventionnellement à faire valoir les dispositions de l'article 14 du contrat Grell et de l'article 4 du contrat du 10 mai 1900; qu'à la date des dits Compromis il était en effet constant qu'aucun litige entre ces Parties n'avait été déféré aux Tribunaux Vénézuéliens et que le maintien de la juridiction Vénézuélienne quant à ces réclamations eût été incompatible et inconciliable avec l'arbitrage institué;

Considérant qu'il ne s'agissait pas de la cession d'une concession, mais de la cession d'une créance, que le défaut de notification préalable de la cession d'une créance n'est que l'inobservation d'une prescription de la législation locale et bien que pareille prescription se trouve aussi dans d'autres législations, elle ne peut être considérée comme exigée par l'équité absolue, au moins lorsqu'en fait, le débiteur a eu connaissance de la cession et qu'il n'a pas plus payé sa dette au cédant qu'au cessionnaire;

III. QUANT AUX 147.638,79 DOLLARS:

Considérant qu'en ce qui concerne les 1.053 dollars pour transport de passagers et marchandises en 1900 et les 25.845,20 dollars pour loyer des bateaux à vapeur Delta, Socorro, Masparro, Guanare Heroe de juillet 1900 à avril 1902, la sentence du Surarbitre ne se fonde que sur le défaut de notification préalable de la cession au Gouvernement du Venezuela ou d'acceptation par lui, et que, comme il a été déjà dit, ce moyen de défense était écarté par le Compromis;

Considérant qu'on pourrait en dire autant de la demande des 19.571,34 dollars pour remboursement d'impôts nationaux qui auraient été illégalement perçus et de celle des 3.509,22 dollars du chef de la rétention du „Bolivar," mais qu'il n'est pas prouvé, d'une part que les impôts dont il s'agit étaient de ceux dont la Orinoco Shipping and Trading Company était exempte, d'autre part que le fait querellé procéderait d'un abus d'autorité de la part du Consul Vénézuélien et qu'ainsi ces deux demandes devant être rejetées au fond, quoique par d'autres motifs, l'annulation de la sentence en ce point serait sans intérêt;

Considérant que la décision du Surarbitre allouant 27.692,31

Whereas it follows from the Agreements of 1903 and 1909 — on which the present Arbitration is based — that the United States of Venezuela had by convention renounced invoking the provisions of Article 14 of the Grell contract and of Article 4 of the contract of May 10th 1900, and as, at the date of said Agreements, it was, in fact, certain that no lawsuit between the Parties had been brought before the Venezuelan Courts ; and as the maintenance of Venezuelan Jurisdiction with regard to these claims would have been incompatible and irreconcilable with the arbitration which had been instituted ;

Whereas there is question not of the cession of a concession but of the cession of a debt, and as the omission to notify previously the cession of a debt constitutes but a failure to observe a prescription of local legislation, though a similar prescription also exists in other legislations, it cannot be considered as required by absolute equity, at least when the debtor actually possessed knowledge of the cession and has paid neither the assignor nor the assignee ;

III. AS REGARDS THE 147.638,79 DOLLARS :

Whereas with regard to the 1.053 dollars for the transport of passengers and merchandise in 1900 and the 25.845,20 dollars for the hire of the steamers Delta, Socorro, Masparro, Guanare, Heroe, from July 1900 to April 1902, the Award of the Umpire is based only on the omission of previous notification of the cession to the Government of Venezuela or of the acceptance by it, this means of defense being eliminated by the Agreement, as mentioned before ;

Whereas the same might be said of the claim for 19.571,34 dollars for the restitution of national taxes, said to have been collected contrary to law, and of that of 3.509,22 dollars on account of the retention of the "Bolivar" ; but as it has not been proved on the one hand that the taxes here under discussion belonged to those from which the Orinoco Shipping and Trading Company was exempt, and on the other hand that the fact objected to proceeded from abuse of authority on the part of the Venezuelan Consul ; and as both claims must therefore be rejected on their merits, though on other grounds, the annulment of the Award on this point would be without interest ;

Whereas the decision of the Umpire, allowing 27.692,31 dollars

dollars au lieu de 28.461,53 dollars pour rétention et loyer du Masparro et Socorro du 21 mars au 18 septembre 1902, est quant aux 769,22 dollars non alloués, ici encore uniquement fondée sur le défaut de notification de la cession de la créance ;

Considérant que la décision du Surarbitre quant aux autres demandes rentrant dans ce chef pour la période postérieure au 1 avril 1902 est fondée sur des appréciations des faits et sur une interprétation de principes de droit qui ne sont pas sujettes ni à nouvel examen ni à revision par ce Tribunal, les décisions intervenues sur ces points n'étant pas entachées de nullité ;

IV. QUANT AUX 25.000 DOLLARS :

Considérant que la demande de 25.000 dollars pour honoraires, dépenses et débours a été rejetée par le Surarbitre en conséquence du rejet de la plupart des réclamations des Etats-Unis d'Amérique, et que — par la présente sentence — quelques-unes de ces réclamations étant admises, il paraît équitable d'allouer une partie de cette somme, que le Tribunal fixe *ex aequo et bono* à 7000 dollars ;

Considérant que la loi Vénézuélienne fixe l'intérêt légal à 3 % et que, dans ces conditions, le Tribunal, tout en constatant en fait l'insuffisance de ce taux, ne peut allouer d'avantage ;

PAR CES MOTIFS :

Le Tribunal déclare nulle la sentence du Surarbitre M. Barge en date du 22 février 1904, quant aux quatre points suivants :

- 1°. les 19.200 dollars ;
- 2°. les 1.053 dollars ;
- 3°. les 25.845,20 dollars ;
- 4°. les 769,22 dollars déduits de la réclamation des 28.461,53 dollars pour rétention et loyer du Masparro et Socorro ;

Et statuant, en conséquence de la nullité ainsi constatée, et à raison des éléments soumis à son appréciation ;

Déclare ces chefs de demande fondés et alloue aux Etats-Unis d'Amérique, indépendamment des sommes allouées par la sentence du Surarbitre du 22 février 1904, les sommes de :

- | | |
|----------------------|-------------------------|
| 1°. 19.200 dollars ; | 3°. 25.845,20 dollars ; |
| 2°. 1.053 dollars ; | 4°. 769,22 dollars ; |

instead of 28.461,53 dollars for the retention and hire of the Masparro and Socorro from March 21st to September 18th 1902, as regards the 769,22 dollars disallowed, is based here also only on the omission of notification of the cession of the debt;

Whereas the Umpire's decision with regard to the other claims included under this head for the period after April 1st 1902 is based on a consideration of facts and on an interpretation of legal principles which are subject neither to reexamination nor to revision by this Tribunal, the decisions awarded on these points not being void;

IV. AS REGARDS THE 25.000 DOLLARS:

Whereas the claim for 25.000 dollars for counsel fees and expenses of litigation has been disallowed by the Umpire in consequence of the rejection of the greater part of the claims of the United States of America, and as by the present award some of these claims having been admitted it seems equitable to allow part of this sum, which the Tribunal fixes *ex aequo et bono* at 7000 dollars;

Whereas the Venezuelan law fixes the legal interest at 3 % and as, under these conditions, the Tribunal, though aware of the insufficiency of this percentage, cannot allow more;

FOR THESE REASONS:

The Tribunal declares void the Award of Umpire Barge dated February 22nd 1904 on the four following points:

- 1°. *as regards the 19.200 dollars;*
- 2°. *as regards the 1.053 dollars;*
- 3°. *as regards the 25.845,20 dollars;*
- 4°. *as regards the 769,22 dollars deducted from the claim for 28.461,53 dollars for the retention and hire of the Masparro and Socorro;*

And deciding, in consequence of the nullity thus recognized and by reason of the elements submitted to its appreciation:

Declares these claims founded and allows to the United States of America, besides the sums allowed by the Award of the Umpire of February 22nd 1904, the sums of:

- | | |
|---------------------|------------------------|
| 1°. 19.200 dollars; | 3°. 25.845,20 dollars; |
| 2°. 1.053 dollars; | 4°. 769,22 dollars; |

*le tout avec intérêt à 3 pct. depuis la date de la demande (16 juin 1903)
et à payer dans les deux mois de la présente sentence;*

*alloue en outre à titre d'indemnité pour remboursement de frais et
honoraires 7000 dollars;*

*rejette la demande pour le surplus; la sentence du Surarbitre M.
Barge du 22 février 1904 devant conserver en dehors des points ci-
dessus, son plein et entier effet.*

Fait à La Haye, dans l'Hôtel de la Cour permanente d'Arbitrage,
en triple exemplaire, le 25 octobre 1910.

Le Président : LAMMASCH

Le Secrétaire général : MICHIELS VAN VERDUYNEN

the whole with interest at 3 per cent from the date of the claim (June 16th 1903),

the whole to be paid within two months after the date of the present Award;

Allows besides for the indemnification of counsel fees and expenses of litigation 7000 dollars;

Rejects the claim for the surplus, the Award of Umpire Barge of February 22nd 1904 preserving, save for the above points, its full and entire effect.

Done at The Hague in the Permanent Court of Arbitration in triplicate original, October 25th, 1910.

The President : LAMMASCH

The Secretary general : MICHELS VAN VERDUYNEN

IX

FRANCE AND GREAT BRITAIN

ARREST AND RETURN OF SAVARKAR

COMPROMIS, OCTOBER 25, 1910

SESSIONS, FEBRUARY 14, 1911—FEBRUARY 17, 1911, THE HAGUE

AWARD, FEBRUARY 24, 1911

ARBITRATORS, BEERNAERT, RENAULT, DESART, GRAM, DE SAVORNIN
LOHMAN

AGREEMENT BETWEEN THE UNITED KINGDOM AND FRANCE RE-
FERRING TO ARBITRATION THE CASE OF VINAYAK DAMODAR
SAVARKAR. SIGNED AT LONDON, OCTOBER 25, 1910

The Government of His Britannic Majesty and the Government of the French Republic having agreed, by an exchange of notes dated the 4th and 5th October, 1910, to submit to arbitration, on the one hand, the questions of fact and law raised by the arrest and restoration to the mail steamer "Morea," at Marseilles, on the 8th July, 1910, of the Indian, Vinayak Damodar Savarkar, who had escaped from that vessel, on board of which he was in custody; and on the other hand, the demand of the Government of the Republic with a view to the restitution to them of Savarkar;

The Undersigned, duly authorised to this effect, have arrived at the following Agreement:—

ARTICLE I

An Arbitral Tribunal, composed as hereinafter stated, shall undertake to decide the following question:—

Should Vinayak Damodar Savarkar, in conformity with the rules of international law, be restored or not be restored by His Britannic Majesty's Government to the Government of the French Republic?

ARTICLE 2

The Arbitral Tribunal shall be composed of five arbitrators chosen from the members of the Permanent Court at The Hague. The two Contracting Parties shall settle the composition of the Tribunal. Each of them may choose as arbitrator one of their nationals.

ARTICLE 3

On the 6th December, 1910, each of the High Contracting Parties shall forward to the Bureau of the Permanent Court fifteen copies of its case, with duly certified copies of all documents which it proposes to put in. The Bureau will undertake without delay to forward them to the arbitrators and to each Party: that is to say, two copies for each arbitrator and three copies for each Party. Two copies will remain in the archives of the Bureau.

On the 17th January, 1911, the High Contracting Parties will deposit in the same manner their counter-cases, with documents in support of them.

These counter-cases may necessitate replies, which must be presented within a period of fifteen days after the delivery of the counter-cases.

The periods fixed by the present Agreement for the delivery of the cases, counter-cases, and replies may be extended by mutual agreement between the High Contracting Parties.

ARTICLE 4

The Tribunal shall meet at The Hague the 14th February, 1911. Each Party shall be represented by an Agent, who shall serve as intermediary between it and the Tribunal.

The Arbitral Tribunal may, if it thinks necessary, call upon one or other of the agents to furnish it with oral or written explanations, to which the agent of the other Party shall have the right to reply.

It shall also have the right to order the attendance of witnesses.

ARTICLE 5

The Parties may employ the French or English language. The members of the Tribunal may, at their own choice, make use of the French or English language. The decisions of the Tribunal shall be drawn up in the two languages.

ARTICLE 6

The award of the Tribunal shall be given as soon as possible, and, in any case, within thirty days following the date of its meeting at The Hague or that of the delivery of the written explanations which may have been furnished at its request. This period may, however, be prolonged at the request of the Tribunal if the two High Contracting Parties agree.

Done in duplicate at London, October 25, 1910.

(L. S.) E. GREY

(L. S.) PAUL CAMBON

NOTE

Sir Edward Grey to Mr. Paul Cambon.

25 octobre 1910.

Your Excellency,

With reference to the agreement which we have concluded this day, for the purpose of submitting to arbitration certain matters in connexion with the arrest and restitution of Vinayak Damodar Savarkar, at Marseilles, in July last, I have the honour to place on record the understanding that any points which may arise in the course of this arbitration which are not covered by the terms of the Agreement above referred to shall be determined by the provisions of the International Convention for the pacific settlement of International disputes signed at the Hague, on the 18th of October, 1907.

It is further understood that each party shall bear its own expenses and an equal share of the expenses of the Tribunal.

I have the honour, etc.

Signé : E. GREY

AWARD DELIVERED FEBRUARY 24TH 1911 BY THE ARBITRAL TRIBUNAL APPOINTED TO DECIDE THE "CASE OF SAVARKAR"

Whereas, by an agreement dated the 25th October 1910, the Government of the French Republic and the Government of His Britannic Majesty agreed to submit to Arbitration the questions of fact and law raised by the arrest and restoration to the mail-steamer "Morea" at Marseilles, on the 8th July 1910, of the British Indian Savarkar, who had escaped from that vessel where he was in custody; and the demand made by the Government of the French Republic for the restitution of Savarkar;

the Arbitral Tribunal has been called upon to decide the following question:

Should Vinayak Damodar Savarkar, in conformity with the rules of international law, be restored or not be restored by His Britannic Majesty's Government to the Government of the French Republic?

Whereas, for the purpose of carrying out this agreement, the two Governments have respectively appointed as Arbitrators:

His Excellency Monsieur Beernaert, Minister of State, Member of the Belgian Chamber of Representatives, etc., President;

The Right Honourable, the Earl of Desart, formerly His Britannic Majesty's Procurator general;

Monsieur Louis Renault, Professor at the University of Paris, Minister plenipotentiary, Legal Adviser of the Department of Foreign Affairs;

Monsieur G. Gram, formerly Norwegian Minister of State, Provincial Governor;

His Excellency, the Jonkheer A. F. de Savornin Lohman, Minister of State, Member of the Second Chamber of the States-General of the Netherlands.

And, further, the two Governments have respectively appointed as their Agents,

The Government of the French Republic:

Monsieur André Weiss, assistant legal Adviser of the Department of Foreign Affairs of the French Republic, Professor of Law at the University of Paris.

The Government of His Britannic Majesty:

Mr. Eyre Crowe, Councillor of Embassy, a Senior Clerk at the British Foreign Office.

Whereas, in accordance with the provisions of the Agreement, Cases, Counter-Cases and Replies have been duly exchanged between the Parties, and communicated to the Arbitrators.

Whereas the Tribunal met at The Hague on the 14th February 1911.

Whereas, with regard to the facts which gave rise to the difference of opinion between the two Governments, it is established that, by a letter, dated the 29th June 1910, the Commissioner of the Metropolitan Police in London informed the "Directeur de la Sûreté générale" at Paris, that the British-Indian Vinayak Damodar Savarkar was about to be sent to India, in order to be prosecuted for abetment of murder etc., and that he would be on board the vessel "Morea" touching at Marseilles on the 7th or 8th July.

Whereas, in consequence of the receipt of this letter, the Ministry of the Interior informed the Prefect of the "Bouches-du-Rhône," by a telegram dated the 4th July 1910, that the British Police were sending Savarkar to India on board the steamship "Morea." This telegram states that some "révolutionnaires hindous" then on the Continent, might take advantage of this to further the escape of this foreigner, and the Prefect was requested to take the measures necessary to guard against any attempt of that kind.

Whereas the "Directeur de la Sûreté générale" replied by a letter dated the 9th July 1910 to the letter of the Commissioner of the Metropolitan Police, stating that he had given the necessary instructions for the purpose of guarding against the occurrence of any incident during the presence at Marseilles of the said Vinayak Damodar Savarkar, on board the steamship "Morea."

Whereas, on the 7th July, the "Morea" arrived at Marseilles. The following morning, between 6 and 7 o'clock, Savarkar, having succeeded in effecting his escape, swam ashore and began to run; he was arrested by a brigadier of the French maritime gendarmerie and taken back to the vessel. Three persons, who had come ashore from the vessel, assisted the brigadier in taking the fugitive back.

On the 9th July, the "Morea" left Marseilles with Savarkar on board.

Whereas, from the statements made by the French brigadier to the Police at Marseilles, it appears :

that he saw the fugitive, who was almost naked, get out of a porthole of the steamer, throw himself into the sea and swim to the quay ;

that at the same moment some persons from the ship, who were shouting and gesticulating, rushed over the bridge leading to the shore, in order to pursue him ;

that a number of people on the quay commenced to shout "Arrêtez-le" ;

that the brigadier at once went in pursuit of the fugitive and, coming up to him after running about five hundred metres, arrested him.

Whereas the brigadier declares that he was altogether unaware of the identity of the person with whom he was dealing, that he only thought that the man who was escaping was one of the crew, who had possibly committed an offence on board the vessel.

Whereas, with regard to the assistance afforded him by one of the crew and two Indian policemen, it appears from the explanations given on this point, that these men came up after the arrest of Savarkar, and that their intervention was only auxiliary to the action of the brigadier. The brigadier had seized Savarkar by one arm for the purpose of taking him back to the ship, and the prisoner went peaceably with him. The brigadier, assisted by the above mentioned persons, did not relax his hold, till he reached the half deck of the vessel.

The brigadier said that he did not know English.

From what has been stated, it would appear that the incident did not occupy more than a few minutes.

Whereas it is alleged that the brigadier who effected the arrest was not ignorant of the presence of Savarkar on board the vessel, and that his orders, like those of all the French Police and Gendarmes were to prevent any Hindoo from coming on board who had not got a ticket.

Whereas these circumstances show that the persons on board in

charge of Savarkar might well have believed that they could count on the assistance of the French Police.

Whereas it is established that a "Commissaire" of the French Police came on board the vessel shortly after her arrival at the port, and, in accordance with the orders of the Prefect, placed himself at the disposal of the Commander in respect of the watch to be kept ;

that, in consequence, this "Commissaire" was put into communication with the British Police Officer who, with other Police Officers, was in charge of the prisoner ;

that the Prefect of Marseilles, as appears from a telegram dated the 13th July 1910 addressed to the Minister of the Interior, stated that he had acted in this matter in accordance with instructions given by the "Sûreté générale" to make the necessary arrangements to prevent the escape of Savarkar.

Whereas, having regard to what has been stated, it is manifest that the case is not one of recourse to fraud or force in order to obtain possession of a person who had taken refuge in foreign territory, and that there was not, in the circumstances of the arrest and delivery of Savarkar to the British Authorities and of his removal to India, anything in the nature of a violation of the sovereignty of France, and that all those who took part in the matter certainly acted in good faith and had no thought of doing anything unlawful.

Whereas, in the circumstances cited above, the conduct of the brigadier not having been disclaimed by his chiefs before the morning of the 9th July, that is to say before the "Morea" left Marseilles, the British Police might naturally have believed that the brigadier had acted in accordance with his instructions, or that his conduct had been approved.

Whereas, while admitting that an irregularity was committed by the arrest of Savarkar, and by his being handed over to the British Police, there is no rule of International Law imposing, in circumstances such as those which have been set out above, any obligation on the Power which has in its custody a prisoner, to restore him because of a mistake committed by the foreign agent who delivered him up to that Power.

FOR THESE REASONS:

The Arbitral Tribunal decides that the Government of His Britannic Majesty is not required to restore the said Vinayak Damodar Savarkar to the Government of the French Republic.

Done at The Hague, at the Permanent Court of Arbitration,
February 24th, 1911.

The President: A. BEERNAERT

The Secretary general: MICHIELS VAN VERDUYNEN

X

ITALY AND PERU

CANEVARO CLAIM

COMPROMIS, APRIL 25, 1910

SESSIONS, APRIL 20, 1912-APRIL 22, 1912, THE HAGUE

AWARD, MAY 3, 1912

ARBITRATORS, RENAULT, FUSINATO, CALDERON

PROTOCOLLO

Riuniti nel ministero delle relazioni estere del Perù i sottoscritti, conte Giulio Bolognesi, incaricato d'affari d'Italia, ed il dottor don Melitón F. Porras, ministro delle relazioni estere del Perù, hanno convenuto quanto segue:

Il governo di S. M. il Re d'Italia ed il governo della repubblica del Perù, non avendo potuto mettersi d'accordo riguardo al reclamo formulato dal primo in nome dei signori conti Napoleone, Carlo e Raffaele Canevaro per il pagamento della somma di quarantatre mila cento quaranta lire sterline, più gli interessi legali che essi sollecitano dal governo del Perù,

Hanno determinato, conformemente all'art. 1° del trattato permanente d'arbitrato esistente fra i due paesi, sottomettere questa controversia alla corte permanente d'arbitrato dell'Aja, la quale dovrà giudicare in diritto i seguenti punti:

Deve il governo del Perù pagare in effettivo o in base alle disposizioni della legge peruana del debito interno del 12 giugno 1889 le cambiali di cui

Reunidos en el Ministerio de Relaciones Exteriores del Perú, los infrascriptos Señores Conte Giulio Bolognesi, Encargado de Negocios de Italia, y doctor don Melitón F. Porras, Ministro del Ramo, han convenido en lo siguiente:

El Gobierno de S. M. el Rey de Italia y el Gobierno de la Republica Peruana, no habiendo podido ponerse de acuerdo respecto de la reclamacion formulada por el primero a nombre de los Señores Condes Napoleón, Carlos y Rafael Canevaro, para el pago de la suma de cuarenta y tres mil ciento-cuarenta libras esterlinas y sus intereses legales, que ellos solicitan del Gobierno del Perú,

Han determinado, de conformidad con el art. 1° del Tratado Permanente de Arbitraje existente entre los dos paises, someter esta controversia a la Corte Permanente de Arbitraje de La Haya, la cual deberá juzgar en derecho los siguientes puntos:

Debe el Gobierno del Perú pagar en efectivo, ó con aseo a las disposiciones de la ley peruana de deuda interna de 12 Junio de 1889, los libra-

PROTOCOL

The undersigned, met in the Peruvian Foreign Office, the Count Giulio Bolognesi, Chargé d'affaires of Italy, and Dr. Melitón F. Porras, Minister of Foreign Affairs of Peru, have agreed on the following :

The Government of His Majesty the King of Italy and the Government of the Republic of Peru, not having been able to come to an agreement with regard to the claim formulated by the former in the name of the Counts Napoleón, Carlos and Rafael Canevaro, for the payment of the sum of forty-three thousand one hundred and forty pounds sterling and its legal interest, which they demand from the Government of Peru,

Have determined, in conformity with Article I. of the Permanent Treaty of Arbitration in force between the two countries, to submit this dispute to the Permanent Court of Arbitration of The Hague, which shall render a legal finding upon the following points :

Must the Government of Peru pay in cash or on the basis of the provisions of the Peruvian law on domestic debt of June 12, 1889

sono attualmente possessori i fratelli Napoleone, Carlo e Raffaele Canevaro e che furono tratte dal governo del Perù all'ordine della Casa José Canevaro & Hijos per la somma di 43,140 lire sterline, più gli interessi legali di questa somma?

Hanno i fratelli Canevaro diritto ad esigere la totalità della somma reclamata?

Ha il conte Raffaele Canevaro diritto ad essere considerato reclamante italiano?

Il governo di S. M. il Re d'Italia ed il governo della repubblica del Perù si obbligano a nominare, entro quattro mesi di questo protocollo, i membri della corte arbitrale.

Entro sette mesi dalla costituzione della corte arbitrale ambedue i governi le presenteranno l'esposizione completa della controversia, con tutti i documenti, prove, allegati e argomenti del caso; ogni governo potrà disporre di altri cinque mesi per presentare alla corte arbitrale la propria risposta all'altro governo, ed in questa sarà permesso soltanto di riferirsi alle argomentazioni contenute nell'esposizione della parte contraria.

Si considererà allora terminata la discussione, a meno che la corte arbitrale richieda nuovi documenti, prove od allegati, che dovranno essere presentati entro quattro mesi contati dal momento in cui l'arbitro li chiede.

Se detti documenti, prove od allegati non vengono presentati entro questo termine, si pronuncerà la sentenza arbitrale, come se non esistessero.

In fede di che, i sottoscritti hanno firmato il presente protocollo, redatto in italiano ed in spagnuolo e vi hanno apposto i loro rispettivi sigilli.

Fatto in doppio esemplare, in Lima, il venticinque aprile millenovecentodieci.

mientos de que son actualmente poseedores los hermanos Napoleón, Carlos y Rafael Canevaro y que fueron girados par el Gobierno Peruano à la orden de la Casa José Canevaro y Hijos para la suma de 43,140 libras esterlinas y ademas los intereses legales de dicha suma?

Tienen los hermanos Canevaro derecho à exigir la totalidad de la suma reclamada?

Tiene don Rafael Canevaro derecho à ser considerado como reclamante italiano?

El Gobierno de S. M. el Rey de Italia y el Gobierno de la Republica Peruana se obligan à nombrar, dentro de cuatro meses contados desde la fecha de esto protocolo, los miembros de la Corte Arbitral.

A los siete meses de la constitucion de la Corte Arbitral, ambos Gobiernos le presentaran la exposicion completa de la contraversia, con todos los documentos, pruebas, alegatos y argumentos del caso; cada Gobierno podrá disponer de otros cinco meses para presentar ante la Corte Arbitral su respuesta al otro Gobierno, y en dicha respuesta solamente será permitido referirse à las alegaciones contenidas en la exposicion de la Parte Contraria.

Se considerará entonces terminada la discusion, à menos que la Corte Arbitral solicite nuevos documentos, pruebas ó alegatos, que deberán ser presentados dentro de cuatro meses contados desde el momento en que el Arbitro los pida.

Si dichos documentos, pruebas ó alegatos no se habiesen presentado en esto termino, se pronunciará la sentencia arbitral como si no existieren.

En fé de lo cual, los infrascritos firman el presente Protocolo, redacto en italiano y en español, poniendo en el sus respectivos sellos.

Hecho en doble ejemplar, en Lima, el veinte y cinco de abril de mil noveciento dies.

GIULIO BOLOGNESI
M. F. PORRAS

the drafts now in the possession of the brothers Napoleón, Carlos and Raphael Canevaro and which were drawn by the Peruvian Government to the order of the firm of José Canevaro and Sons for the sum of 43,140 pounds sterling plus the legal interest of the said sum?

Have the Canevaro brothers the right to demand the total of the amount claimed?

Has Don Raphael Canevaro the right to be considered as an Italian claimant?

The Government of His Majesty the King of Italy and the Government of the Republic of Peru bind themselves to name, within four months from the date of this protocol, the members of the Court of Arbitration.

Within seven months of the formation of the Court of Arbitration, both Governments will present to it a complete statement of the case, with all the documents, evidence, allegations and arguments of the case; each Government shall have at its disposal five months more in order to present to the Court of Arbitration its reply to the other Government, and in this it will be permitted only to refute the allegations contained in the statement of the opposing Party.

Then the discussion will be regarded as closed, unless the Court of Arbitration asks for new documents, proofs or allegations, which will have to be presented within four months from the time when the arbitrator requests them.

If said documents, proofs or allegations are not presented within this period, the award shall be pronounced as if they did not exist.

In witness whereof the undersigned have signed the present Protocol, in Italian and Spanish, and have affixed to it their respective seals.

Done in duplicate at Lima the twenty-fifth day of April, nineteen hundred and ten.

GIULIO BOLOGNESI
M. F. PORRAS

SENTENCE RENDUE LE 3 MAI 1912 PAR LE TRIBUNAL ARBITRAL
CHARGÉ DE STATUER SUR LE DIFFÉREND ENTRE L'ITALIE ET LE
PÉROU AU SUJET DE LA RÉCLAMATION DES FRÈRES CANEVARO

Considérant que, par un Compromis en date du 25 avril 1910, le
Gouvernement Italien et le Gouvernement du Pérou se sont mis
d'accord à l'effet de soumettre à l'arbitrage les questions suivantes :

„Le Gouvernement du Pérou doit-il payer en espèces ou bien
„d'après les dispositions de la loi péruvienne sur la dette intérieure
„du 12 juin 1889 les lettres à ordre (*cambiali, libramientos*) dont sont
„actuellement possesseurs les frères Napoléon, Carlo et Raphaël
„Canevaro, qui furent tirées par le Gouvernement du Pérou à
„l'ordre de la maison José Canevaro è hijos pour le montant de
„43 140 livres sterling plus les intérêts légaux du montant susdit ?”

„Les frères Canevaro ont-ils le droit d'exiger le total de la somme
„réclamée ?”

„Le comte Raphaël Canevaro a-t-il le droit d'être considéré
„comme réclamant italien ?”

Considérant qu'en exécution de ce Compromis, ont été désignés
comme Arbitres :

Monsieur Louis Renault, Ministre plénipotentiaire, Membre de
l'Institut, Professeur à la Faculté de droit de l'Université de Paris
et à l'Ecole des sciences politiques, Jurisconsulte du Ministère des
Affaires Etrangères, Président ;

Monsieur Guido Fusinato, Docteur en droit, ancien Ministre de
l'Instruction publique, Professeur honoraire de droit international
à l'Université de Turin, Député, Conseiller d'Etat ;

Son Excellence Monsieur Manuel Alvarez Calderon, Docteur en
droit, Professeur à l'Université de Lima, Envoyé extraordinaire et
Ministre plénipotentiaire du Pérou à Bruxelles et à Berne.

Considérant que les deux Gouvernements ont respectivement
désigné comme Conseils :

Le Gouvernement Royal Italien :

Monsieur le Professeur Vittorio Scialoja, Sénateur du Royaume
d'Italie et, comme conseil adjoint, le Comte Giuseppe Francesco
Canevaro, Docteur en droit,

Le Gouvernement Péruvien :

Monsieur Manuel Maria Mesones, Docteur en droit, Avocat.

AWARD RENDERED MAY 3, 1912, BY THE ARBITRAL TRIBUNAL CHARGED WITH DECIDING ON THE DIFFERENCE BETWEEN ITALY AND PERU IN REGARD TO THE CLAIM OF THE CANEVARO BROTHERS

Whereas, by a compromis of the date of April 25, 1910, the Italian and Peruvian Governments agreed to submit the following questions to arbitration :

Ought the Government of Peru to pay in cash, or in accordance with the provisions of the Peruvian law on the domestic debt of June 12, 1889, the drafts (*lettres à ordre, cambiali, libramientos*) now in the possession of the brothers Napoleon, Carlo, and Raphael Canevaro, and which were drawn by the Peruvian Government to the order of the firm of José Canevaro & Sons for the sum of 43,140 pounds sterling, plus the legal interest on the said sum ?

Have the Canevaro brothers the right to demand the total of the amount claimed ?

Has Count Raphael Canevaro the right to be considered as an Italian claimant ?

Whereas, in the pursuance of this compromis, there were designated as arbitrators :

Mr. Louis Renault, Minister Plenipotentiary, Member of the Institute, Professor in the Faculty of Law at the University of Paris and at the School of Political Sciences, Jurisconsult of the Ministry of Foreign Affairs, President ;

Mr. Guido Fusinato, Doctor of Law, former Minister of Public Instruction, Honorary Professor of International Law at the University of Turin, Deputy, Counselor of State ;

His Excellency Mr. Manuel Alvarez Calderon, Doctor of Law, Professor at the University of Lima, Envoy Extraordinary and Minister Plenipotentiary of Peru at Brussels and Berne.

Whereas, the two governments have respectively appointed as counsel :

The Royal Italian Government :

Professor Vittorio Scialoja, Senator of the Kingdom of Italy and, as assistant counsel, Count Giuseppe Francesco Canevaro, Doctor of Law ;

The Peruvian Government :

Mr. Manuel Maria Mesones, Doctor of Law, Attorney.

Considérant que, conformément aux dispositions du Compromis, les Mémoires et Contre-mémoires ont été dûment échangés entre les Parties et communiqués aux Arbitres ;

Considérant que le Tribunal s'est réuni à La Haye le 20 avril 1912.

Considérant que, pour la simplification de l'exposé qui suivra, il vaut mieux statuer d'abord sur la troisième question posée par le Compromis, c'est-à-dire sur la qualité de Raphaël Canevaro ;

Considérant que, d'après la législation péruvienne (Art. 34 de la Constitution), Raphaël Canevaro est Péruvien de naissance comme étant né sur le territoire péruvien,

Que, d'autre part, la législation italienne (Art. 4 du Code civil) lui attribue la nationalité italienne comme étant né d'un père italien ;

Considérant qu'en fait, Raphaël Canevaro c'est, à plusieurs reprises, comporté comme citoyen péruvien, soit en posant sa candidature au Sénat où ne sont admis que les citoyens péruviens et où il est allé défendre son élection, soit surtout en acceptant les fonctions de Consul général des Pays-Bas, après avoir sollicité l'autorisation du Gouvernement, puis du Congrès péruvien ;

Considérant que, dans ces circonstances, quelle que puisse être en Italie, au point de vue de la nationalité, la condition de Raphaël Canevaro, le Gouvernement du Pérou a le droit de le considérer comme citoyen péruvien et de lui dénier la qualité de réclamant italien.

Considérant que la créance qui a donné lieu à la réclamation soumise au Tribunal résulte d'un décret du dictateur Piérola du 12 décembre 1880, en vertu duquel ont été créés, à la date du 23 du même mois, des bons de paiement (libramientos) à l'ordre de la maison „José Canevaro è hijos” pour une somme de 77 000 livres sterling, payables à diverses échéances ;

Que ces bons n'ont pas été payés aux échéances fixées, qui ont coïncidé avec l'occupation ennemie ;

Qu'un acompte de 35 000 livres sterling ayant été payé à Londres en 1885, il reste une créance de 43 140 livres sterling sur le sort de laquelle il s'agit de statuer ;

Considérant qu'il résulte des faits de la cause que la maison de commerce „José Canevaro è hijos,” établie à Lima, a été reconstituée en 1885 après la mort de son fondateur, survenue en 1883 ;

Whereas, in accordance with the terms of the compromis, the memoires and counter-memoires have been duly exchanged between the parties and communicated to the arbitrators;

Whereas, the tribunal met at The Hague on April 20, 1912.

Whereas, in order to simplify the statement which follows it is best to pass first on the third question propounded in the compromis, that is to say, upon the status of Raphael Canevaro;

Whereas, according to Peruvian legislation (Art. 34 of the Constitution), Raphael Canevaro is a Peruvian by birth because born on Peruvian territory.

As, on the other hand, the Italian legislation (Art. 4 of the Civil Code) attributes to him Italian nationality because born of an Italian father;

Whereas, as in fact, Raphael Canevaro has on several occasions conducted himself as a Peruvian citizen, both by standing as a candidate for the Senate, where none are admitted except Peruvian citizens and where he went to defend his election, and also especially in accepting the office of Consul General of the Netherlands, after having solicited the authorization of the Peruvian Government and then of the Peruvian Congress;

Whereas, under these circumstances, whatever Raphael Canevaro's status may be in Italy with respect to his nationality, the Government of Peru has the right to consider him as a Peruvian citizen and to deny to him the capacity of Italian claimant.

Whereas, as the debt (*créance*) which gave rise to the claim submitted to the tribunal arises from a decree of the dictator Piérولا of December 12, 1880, by virtue of which there were issued, under date of the 23rd of the same month, pay checks (*bons de paiement, libramientos*) to the order of the firm of José Canevaro & Sons for the sum of 77,000 pounds sterling, payable at different dates;

As these "checks" were not paid at the dates fixed, which coincided with the hostile occupation;

As one installment of 35,000 pounds sterling was paid at London in 1885, there remains a debt of 43,140 pounds sterling in regard to the fate of which it is necessary to pass judgment;

Whereas, it follows from the facts of the case that the business firm of "José Canevaro & Sons," established at Lima, was reorganized in 1885 after the death of its founder, which occurred in 1883;

Qu'elle a bien conservé la raison sociale „José Canevaro è hijos,” mais qu'en réalité, comme le constate l'acte de liquidation du 6 février 1905, elle était composée de José Francisco et de César Canevaro, dont la nationalité péruvienne n'a jamais été contestée, et de Raphaël Canevaro, dont la même nationalité, aux termes de la loi du Pérou, vient d'être reconnue par le Tribunal;

Que cette société, péruvienne à un double titre et par son siège social et par la nationalité de ses membres, a subsisté jusqu'à la mort de José Francisco Canevaro, survenue en 1900;

Considérant que c'est au cours de l'existence de cette société que sont intervenues les lois péruviennes du 26 octobre 1886, du 12 juin 1889 et du 17 décembre 1898 qui ont édicté les mesures les plus graves en ce qui concerne les dettes de l'Etat péruvien, mesures qu'a paru nécessiter l'état désastreux auquel le Pérou avait été réduit par les malheurs de la guerre étrangère et de la guerre civile;

Considérant que, sans qu'il y ait lieu pour le Tribunal d'apprécier en elles-mêmes les dispositions des lois de 1889 et de 1898, certainement très rigoureuses pour les créanciers du Pérou, leurs dispositions s'imposaient sans aucun doute aux Péruviens individuellement comme aux sociétés péruviennes, qu'il y a là un pur fait que le Tribunal n'a qu'à constater.

Considérant que, le 30 septembre 1890, la Société Canevaro, par son représentant Giacometti, s'adressait au Sénat pour obtenir le paiement des 43 140 livres sterling qui auraient été, suivant lui, fournis pour satisfaire aux nécessités de la guerre;

Que, le 9 avril 1891, dans une lettre adressée au Président du Tribunal des Comptes, Giacometti assignait une triple origine à la créance: un solde dû à la maison Canevaro par le Gouvernement comme prix d'armements achetés en Europe au temps de la guerre; lettres tirées par le Gouvernement à la charge de la consignation du guano aux Etats-Unis, protestées et payées par José Francisco Canevaro; argent fourni pour l'armée par le Général Canevaro;

Qu'enfin, le 1^{er} avril 1891, le même Giacometti, s'adressant encore au Président du Tribunal des Comptes, invoquait l'article 14 de la loi du 12 juin 1889 que, disait-il, le Congrès avait votée „animado del mas patriotico proposito,” pour obtenir le règlement de la créance;

Considérant que le représentant de la maison Canevaro avait

As indeed it preserved the firm name of "José Canevaro & Sons," but in reality, as the act of liquidation of February 6, 1905 shows, it was composed of José Francisco and César Canevaro, whose Peruvian nationality was never contested, and of Raphael Canevaro, whose said nationality, in accordance with the law of Peru, has just been recognized by the court ;

As this company was Peruvian on two grounds both by its firm name and by the nationality of its members, continued until the death of José Francisco Canevaro, which occurred in 1900 ;

Whereas as it was during the existence of this firm that there were enacted the Peruvian laws of October 26, 1886, June 12, 1889, and December 17, 1898, which prescribed the gravest measures in regard to the debts of the Peruvian Government, measures appearing to be necessitated by the disastrous condition to which Peru had been reduced by the evils of foreign and civil war ;

Whereas, though it is not the place of the tribunal to pass upon the provisions themselves of the laws of 1889 and 1898, certainly very severe on the creditors of Peru, the provisions were imposed without any doubt on Peruvian individuals as also on Peruvian firms, which is merely a fact the tribunal can but recognize.

Whereas, as on September 30, 1890, the Canevaro firm, through its representative Giacometti, applied to the Senate to secure the payment of the 43,140 pounds sterling which had according to it been furnished to supply the needs of the war ;

As on April 9, 1891, in a letter addressed to the President of the Tribunal of Accounts, Giacometti assigned a triple origin to the debt : a balance due the Canevaro firm from the government in payment of armaments bought in Europe during the war ; drafts drawn by the government against the consignment of guano to the United States, protested and paid by José Francisco Canevaro ; money furnished for the army by General Canevaro ;

As finally, on April 1, 1891, the same Giacometti, again addressing the President of the Tribunal of Accounts, cited Article 14 of the law of June 12, 1889 which he said the Congress had passed "actuated by the most patriotic purposes," in order to obtain a settlement of the debt ;

Whereas, as the representative of the Canevaro firm had at first

d'abord assigné à la créance une origine manifestement erronée, qu'il ne s'agissait nullement de fournitures ou d'avances faites en vue de la guerre contre le Chili, mais, comme il a été reconnu plus tard, uniquement du remboursement de lettres de change antérieures qui, tirées par le Gouvernement péruvien, avaient été protestées, puis acquittées par la maison Canevaro ;

Que c'est en présence de cette situation qu'il convient de se placer ;

Considérant que la maison Canevaro reconnaissait bien, en 1890 et en 1891, qu'elle était soumise à la loi de 1889 sur la dette intérieure, qu'elle cherchait seulement à se placer dans le cas de profiter d'une disposition favorable de cette loi au lieu de subir le sort commun des créanciers ;

Que sa créance ne rentre pas dans les dispositions de l'article 14 de la dite loi qu'elle a invoquée, ainsi qu'il a été dit plus haut ; qu'il ne s'agit pas, dans l'espèce, d'un dépôt reçu par le Gouvernement, ni de lettres de change tirées sur le Gouvernement, acceptées par lui et reconnues légitimes par le Gouvernement „actuel,” mais d'une opération de comptabilité n'ayant pas pour but de procurer des ressources à l'Etat, mais de régler une dette antérieure ;

Que la créance Canevaro rentre, au contraire, dans les termes très compréhensifs de l'article 1^{er}, n^o. 4 de la loi qui mentionnent les ordres de paiement (*libramientos*), bons, chèques, lettres et autres mandats de paiement émis par les bureaux nationaux *jusqu'en janvier 1880* ; qu'on peut, à la vérité, objecter que ce membre de phrase semble devoir laisser en dehors la créance Canevaro qui est du 23 décembre 1880 ; mais qu'il importe de faire remarquer que cette limitation quant à la date avait pour but d'exclure les créances nées des actes du dictateur Piérola, conformément à la loi de 1886 qui a déclaré nuls tous les actes de ce dernier ; qu'ainsi, en prenant à la lettre la disposition dont il s'agit, la créance Canevaro ne pourrait être invoquée à aucun titre, même pour obtenir la faible proportion admise par la loi de 1889 ;

Mais considérant que, d'une part, il résulte des circonstances et des termes du Compromis que le Gouvernement péruvien reconnaît lui-même comme non applicable à la créance Canevaro la nullité édictée par la loi de 1886 ; que, d'autre part, la nullité du décret

assigned a manifestly erroneous origin to the debt, which was by no means a matter of supplies or advances made in view of the war against Chile, but, as was recognized later, solely for the repayment of previous drafts which, drawn by the Peruvian Government, had been protested and then paid by the Canevaro firm ;

As it is with view to this situation that the case should be considered ;

Whereas, as the Canevaro firm did acknowledge in 1890 and 1891 that it was subject to the law of 1889 on the domestic debt, and it merely sought to place itself in a position to profit by a favorable provision of this law instead of submitting to the common lot of the creditors ;

As its claim (*créance*) does not come within the provisions of Article 14 of said law which it invoked, as said above ; as it is not a question, in this case, of a deposit received by the government, nor of bills of exchange drawn upon the government, accepted by it, and recognized to be lawful by the "present" government, but of an adjustment of accounts not being for the purpose of procuring resources for the government, but of settling a previous debt ;

As the Canevaro claim does, on the contrary, come within the very comprehensive terms of Article 1, No. 4, of the law which mention the pay orders (*libramientos*), bonds (*bons*), checks, bills and other orders to pay issued by the national bureaux *up to January, 1880* ; as it is possible as a matter of fact, to argue that it would seem that the form of this phrase ought to leave out the Canevaro claim, which is of December 23, 1880 ; but it is important to remark that this limitation as to the date was for the purpose of excluding claims arising from acts of the dictator Piérولا, in accordance with the law of 1886 which declared void all the acts of the latter ; as thus, construing literally the provision in question, the Canevaro claim could not be invoked on any ground, even to obtain the slight portion allowed by the law of 1889 ;

But whereas, as on the one hand it appears from the circumstances and from the terms of the compromis that the Peruvian Government itself acknowledges the annulment prescribed by the law of 1886 as not applicable to the Canevaro claim ; and, as on the other hand, the annulment prescribed by the Piérولا decree would leave

de Piérola laisserait subsister la créance antérieure née du paiement des lettres de change ;

Qu'ainsi, la créance résultant des bons de 1880 délivrés à la maison Canevaro doit être considérée comme rentrant dans la catégorie des titres énumérés dans l'article 1^{er}, n^o. 4, de la loi.

Considérant qu'il a été soutenu d'une manière générale que la dette Canevaro ne devait pas subir l'application de la loi de 1889, qu'elle ne pouvait être considérée comme rentrant dans *la dette intérieure*, parce que tous ses éléments y répugnaient, le titre étant à ordre, stipulé payable en livres sterling, appartenant à des Italiens ;

Considérant qu'en dehors de la nationalité des personnes, on comprend que des mesures financières, prises dans l'intérieur d'un pays, n'atteignent pas les actes intervenus au dehors par lesquels le Gouvernement a fait directement appel au crédit étranger ; mais que tel n'est pas le cas dans l'espèce : qu'il s'agit bien, dans les titres délivrés en décembre 1880, d'un règlement d'ordre intérieur, de titres créés à Lima, payables à Lima, en compensation d'un paiement fait volontairement dans l'intérêt du Gouvernement du Pérou ;

Que cela n'est pas infirmé par les circonstances que les titres étaient à ordre, payables en livres sterling, circonstances qui n'empêchaient pas la loi péruvienne de s'appliquer à des titres créés et payables sur le territoire où elle commandait ;

Que l'énumération de l'article 1^{er} n^o. 4 rappelée plus haut comprend des titres à ordre et que l'article 5 prévoit qu'il peut y avoir des conversions de monnaies à faire ;

Qu'enfin il a été constaté précédemment que, lorsque sont intervenues les mesures financières qui motivent la réclamation, la créance appartenait à une société incontestablement péruvienne.

Considérant que la créance de 1880 appartient actuellement aux trois frères Canevaro dont deux sont certainement Italiens ;

Qu'il convient de se demander si cette circonstance rend inapplicable la loi de 1889 ;

Considérant que le Tribunal n'a pas à rechercher ce qu'il faudrait décider si la créance avait appartenu à des Italiens au moment où intervenait la loi qui réduisait dans de si grandes proportions les droits des créanciers du Pérou et si les mêmes sacrifices pouvaient être imposés aux étrangers et aux nationaux ;

intact the previous claim arising from the payment of the bills of exchange;

As thus the obligation arising from the bonds of 1880, delivered to the Canevaro firm, must be considered as coming within the category of the claims enumerated in Article 1, No. 4 of the law.

Whereas it has been held in a general way that the Canevaro debt ought not to be under the application of the law of 1889, as it could not be considered as coming within *the domestic debt* because all its characteristics are against this, the obligation being to order, made payable in pounds sterling, and belonging to Italians;

Whereas, apart from the nationality of the persons, it is known that financial measures taken within a country do not impair the acts concluded outside by which the government has appealed directly to foreign credit; but such is not the case in this instance, as it is a question, in the case of the certificates issued in December, 1880, of a settlement of a domestic nature, of obligations created at Lima, and payable at Lima, in compensation for a payment made voluntarily in behalf of the Peruvian Government;

As this is not impaired by the circumstances that the obligations were to order, payable in pounds sterling, circumstances which did not prevent the Peruvian law from being applicable to obligations created and payable in the territory in which the law prevailed;

As the enumeration in Article 1, No. 4, referred to above, comprises obligations payable to order, and as Article 5 foresees that there may be conversions of money to be made;

Finally as has been stated before, when the financial measures which rest on the claim were taken, the claim belonged to a company incontestably Peruvian.

Whereas, the claim of 1880 belongs at present to the three Canevaro brothers, two of whom are certainly Italians;

As one may properly demand whether this circumstance renders the law of 1889 inapplicable;

Whereas, the tribunal need not inquire what would be decided if the claim had belonged to Italians at the time when the law was enacted which reduced in such comprehensive fashion the rights of the creditors of Peru, and whether the same sacrifices could be imposed on foreigners and on natives;

Mais qu'en ce moment, il s'agit uniquement de savoir si la situation faite aux nationaux, et qu'ils doivent subir, sera modifiée radicalement, parce qu'aux nationaux sont substitués des étrangers sous une forme ou sous une autre ;

Qu'une telle modification ne saurait être admise aisément, parce qu'elle serait contraire à cette idée simple que l'ayant-cause n'a pas plus de droit que son auteur.

Considérant que les frères Canevaro se présentent comme détenant les titres litigieux en vertu d'un endossement ;

Que l'on invoque à leur profit l'effet ordinaire de l'endossement qui est de faire considérer le porteur d'un titre à ordre comme créancier direct du débiteur, de telle sorte qu'il peut repousser les exceptions qui auraient été opposables à son endosseur ;

Considérant que, même en écartant la théorie d'après laquelle, en dehors des effets de commerce, l'endossement est une cession entièrement civile, il y a lieu, dans l'espèce, d'écarter l'effet attribué à l'endossement ;

Qu'en effet, si la date de l'endossement des titres de 1880 n'est pas connue, il est incontestable que cet endossement est de beaucoup postérieur à l'échéance ; qu'il y a lieu, dès lors, d'appliquer la disposition du Code de commerce péruvien de 1902 (art. 436) d'après laquelle l'endossement postérieur à l'échéance ne vaut que comme cession ordinaire ;

Que, d'ailleurs, le principe susrappelé au sujet de l'effet de l'endossement n'empêche pas d'opposer au porteur les exceptions tirées de la nature même du titre, qu'il a connues ou dû connaître ; qu'il est inutile de faire remarquer que les frères Canevaro connaissaient parfaitement le caractère des titres endossés à leur profit.

Considérant que, si les frères Canevaro ne peuvent, en tant que possesseurs de la créance en vertu d'un endossement, prétendre à une condition plus favorable que celle de la société dont ils tiendraient leurs droits, il est permis de se demander si leur situation ne doit pas être différente en les envisageant en qualité d'héritiers de José Francisco Canevaro, comme les présente une déclaration notariée du 6 février 1905 ;

Qu'il y a, en effet, cette différence entre le cas de cession et le cas

But at present it is a matter solely of ascertaining whether the situation imposed on natives, and to which they must submit, will be radically modified because foreigners are substituted for natives under one form or another ;

As such modification could not easily be admitted, because it would be contrary to the plain idea that the one to whom a right has been transferred has no greater right than its author.

Whereas the Canevaro brothers present themselves as holding the disputed evidences of indebtedness by virtue of an indorsement ;

As there is invoked in their behalf the ordinary effect of indorsement, which makes the bearer of a note to order to be considered as the direct creditor of the debtor, so that he may repel any exceptions that might have been brought against his indorser ;

Whereas, even rejecting the theory according to which outside of bills to order, indorsement is a purely civil conveyance, there is ground in this instance for disregarding the effect attributed to the indorsement ;

As a matter of fact, while the date of the indorsement of the certificates of 1880 is not known, it is indisputable that this indorsement was long after maturity ; and there is therefore ground for applying the provision of the Peruvian code of commerce of 1902 (Art. 436), according to which indorsement subsequent to maturity is valid only for an ordinary conveyance ;

As, moreover, the principle invoked above in regard to the effect of indorsement that it does not prevent making against the bearer the exceptions drawn from the very nature of the obligation, which he knew or ought to have known ; and it is useless to remark that the Canevaro brothers knew perfectly the character of the obligations indorsed in their behalf.

Whereas, while the Canevaro brothers can not, as possessors of the claim by virtue of an indorsement, sustain a more favorable status than that of the company from which they hold their rights, it may be asked whether their status ought not to be different considering them as heirs of José Francisco Canevaro, as shown in a notarial declaration of February 6, 1905 ;

As, in fact, there is this difference between the case of a convey-

d'hérédité que, dans ce dernier, ce n'est pas par un acte de pure volonté que la créance a passé d'une tête sur une autre ;

Que, néanmoins, on ne trouve aucune raison décisive pour admettre que la situation a changé par ce fait que des Italiens ont succédé à un Péruvien et que les héritiers ont un titre nouveau qui leur permet de se prévaloir de la créance dans des conditions plus favorables que le *de cuius* ;

Que c'est une règle générale que les héritiers prennent les biens dans l'état où ils se trouvaient entre les mains du défunt.

Considérant qu'enfin il a été soutenu que la loi péruvienne de 1889 sur la dette intérieure, sans changer les créances existantes contre le Pérou, avait seulement donné au Gouvernement, la faculté de s'acquitter de ses dettes d'une certaine manière quand les créanciers en réclameraient le paiement, que c'est au moment où le paiement est réclamé qu'il faut se placer pour savoir si l'exception résultant de la loi peut être invoquée contre toutes personnes, spécialement contre les étrangers ;

Que, les propriétaires actuels de la créance étant des Italiens, il y aurait lieu pour le Tribunal de se prononcer sur le point de savoir si la loi péruvienne de 1889, malgré son caractère exceptionnel, peut être imposée aux étrangers ;

Mais considérant que ce point de vue paraît en désaccord avec les termes généraux et l'esprit de la loi de 1889 ;

Que le Congrès, dont il ne s'agit pas d'apprécier l'œuvre en elle-même, a entendu liquider complètement la situation financière du Pérou, substituer les titres qu'il créait aux titres anciens ;

Que cette situation ne peut être modifiée, parce que les créanciers se présentent plus ou moins tôt pour le règlement de leurs créances ;

Que telle était la situation de la maison Canevaro, péruvienne au moment où la loi de 1889 entra en vigueur, et que, pour les motifs déjà indiqués, cette situation n'a pas été changée en droit par le fait que la créance a, par endossement ou par héritage, passé à des Italiens.

Considérant, en dernier lieu, qu'il a été allégué que le Gouvernement péruvien doit indemniser les réclamants du préjudice que leur a occasionné son retard à s'acquitter de la dette de 1880, que le préju-

ance and the case of an inheritance, that in the latter case it is not by a pure act of the will that the claim has passed from one person to another ;

As nevertheless no decisive reason is found for admitting that the situation has changed by the fact that Italians have succeeded to a Peruvian and that the heirs have a new title which enables them to take advantage of the claim under more favorable conditions than the *de cujus*.

As it is a general rule that heirs take property in the condition it was in when in the hands of the decedent.

Whereas, finally, it has been maintained that the Peruvian law of 1889 on the domestic debt, without affecting the existing claims against Peru, simply gave the government the privilege of discharging its debts in a certain manner when the creditors should demand the payment thereof, and it is at the time the payment is demanded that the matter should be considered in order to ascertain whether the exception arising from the law may be invoked against all persons, especially against foreigners ;

As the present owners of the claim are Italians, there would be reason for the tribunal to pronounce on the point whether the Peruvian law of 1889 in spite of its exceptional character may be imposed on foreigners ;

But whereas this point of view seems in disagreement with the general terms and spirit of the law of 1889 ;

As Congress, the work of which is not in question, intended to liquidate completely the financial situation of Peru and substitute the bonds which it created for the old bonds ;

As this situation can not be modified because some creditors present themselves earlier or later for the settlement of their claims ;

As this was the situation of the Canevaro firm, which was Peruvian at the time when the law of 1889 went into force, and as, for the reasons already set forth, this situation has not been changed in law by the fact that the claim has passed to Italians by indorsement or by inheritance.

Whereas, finally, it has been alleged that the Peruvian Government ought to indemnify the claimants for the injury that the delay in discharging the debt of 1880 has caused them, and that the

dice consiste dans la différence entre le paiement en or et le paiement en titres de la dette consolidée; qu'ainsi le Gouvernement péruvien serait tenu de payer en or la somme réclamée, en admettant même que la loi de 1889 se soit régulièrement appliquée à la créance;

Considérant que le Tribunal estime qu'en entrant dans cet ordre d'idées, il sortirait des termes du Compromis qui le charge seulement de décider si le Gouvernement du Pérou doit payer en argent comptant *ou* d'après les dispositions de la loi péruvienne du 12 juin 1889; que, le Tribunal ayant admis cette dernière alternative, la première solution doit être exclue; qu'il n'est pas chargé d'apprécier la responsabilité qu'aurait encourue à un autre titre le Gouvernement péruvien, de rechercher notamment si le retard à payer peut ou non être excusé par les circonstances difficiles dans lesquelles il se trouvait, étant donné surtout qu'il s'agirait en réalité d'une responsabilité encourue envers une maison péruvienne qui était créancière quand le retard s'est produit.

Considérant qu'il y a lieu de rechercher quel était le montant de la créance Canevaro au moment où est entrée en vigueur la loi de 1889;

Qu'elle se composait d'abord du capital de 43 140 livres sterling, mais qu'il faut y ajouter les intérêts ayant couru jusque là;

Que les intérêts qui étaient, d'après le décret du 23 décembre 1880, de 4 % par an jusqu'aux échéances respectives des bons délivrés et qui étaient compris dans le montant de ces bons, doivent être, à partir de ces échéances, calculés au taux légal de 6 % (Art. 1274 du Code civil péruvien) jusqu'au 1^{er} janvier 1889;

Qu'on obtient ainsi une somme de £16577.2.2 qui doit être jointe au principal pour former la somme globale devant être remboursée en titres de la dette consolidée et devant produire un intérêt de 1 % payable en or à partir du 1^{er} janvier 1889 jusqu'au paiement définitif;

Considérant que, d'après ce qui a été décidé plus haut relativement à la situation de Raphaël Canevaro, c'est seulement au sujet de ses deux frères que le Tribunal doit statuer.

injury consists in the difference between the payment in gold and the payment in bonds of the consolidated debt; that thus the Peruvian Government would be obliged to pay in gold the amount claimed, even admitting that the law of 1889 was properly applied to the claim;

Whereas the tribunal considers that in entering on this line of thought it would depart from the terms of the compromis, which charges it solely to decide whether the Peruvian Government ought to pay in cash *or* in accordance with the provisions of the Peruvian law of June 12, 1889; as the tribunal has admitted the latter alternative, the former solution ought to be excluded; as it is not charged with estimating the responsibility which the Peruvian Government may have incurred on any other ground, especially with inquiring whether the delay in paying may or may not be excused by the difficult circumstances in which it found itself, it being granted especially that it would in reality be a question of responsibility incurred toward a Peruvian firm which was the creditor when the delay took place. '

Whereas there is reason for inquiring what the amount of the Canevaro claim was at the time when the law of 1889 went into force;

As it was composed primarily of the principal, amounting to 43,140 pounds sterling, but as there must be added to this the interest which had accrued up to that time;

As the interest, which according to the decree of December 23, 1880, was 4% per annum up to the respective maturities of the bonds delivered, and which was included in the amount of these bonds, ought from the said maturities to be calculated at the legal rate of 6% (Art. 1274 of the Peruvian Civil Code) up to January 1, 1889;

As there is thus obtained the sum of £16,577.2.2, which must be added to the principal to make up the total amount due to be paid back in bonds of the consolidated debt and to yield interest at 1% payable in gold from January 1, 1889, until final payment;

Whereas, according to what was decided above in regard to the situation of Raphaël Canevaro, it is only in regard to his two brothers that the tribunal is to pass judgment.

Considérant qu'il appartient au Tribunal de régler le mode d'exécution de sa sentence.

PAR CES MOTIFS,

Le Tribunal arbitral décide que le Gouvernement Péruvien devra, le 31 juillet 1912, remettre à la Légation d'Italie à Lima pour le compte des frères Napoléon et Carlo Canevaro :

1°. en titrés de la dette intérieure (1 %) de 1889, le montant nominal de trente-neuf mille huit cent onze livres sterling huit sh. un p. (£39811.8.1.) contre remise des deux tiers des titres délivrés le 23 décembre 1880 à la maison José Canevaro é hijos;

2°. en or, la somme de neuf mille trois cent quatre-vingt huit livres sterling dix-sept sh. un p. (£9388.17.1.), correspondant à l'intérêt de 1 % du 1^{er} janvier 1889 au 31 juillet 1912.

Le Gouvernement péruvien pourra retarder le paiement de cette dernière somme jusqu'au 1^{er} janvier 1913 à la charge d'en payer les intérêts à 6 % à partir du 1^{er} août 1912.

Fait à la Haye, dans l'Hôtel de la Cour Permanente d'Arbitrage, le 3 mai 1912.

Le Président: LOUIS RENAULT

Le Secrétaire général: MICHIELS VAN VERDUYNEN

Whereas it is for the tribunal to determine the mode of executing the award.

FOR THESE REASONS,

The arbitral tribunal decides that the Peruvian Government shall, on July 31, 1912, deliver to the Italian Legation at Lima, on account of the brothers Napoleon and Carlo Canevaro:

1. In bonds of the domestic (1%) debt of 1889, the nominal amount of 39,811 pounds 8 shillings and 1 penny sterling (£39811.8.1) upon the surrender of two-thirds of the bonds delivered on December 23, 1880, to the firm of José Canevaro & Sons;

2. In gold, the sum of 9,388 pounds 17 shillings, 1 penny sterling (£9388.17.1), constituting the interest at 1% from January 1, 1889, to July 31, 1912.

The Peruvian Government may delay the payment of this latter sum until January 1, 1913, on payment of interest thereon at the rate of 6% from August 1, 1912.

Done at The Hague, at the Hall of the Permanent Court of Arbitration, on May 3, 1912.

LOUIS RENAULT, *President*

MICHIELS VAN VERDUYNEN, *Secretary General*

XI

RUSSIA AND TURKEY

ARREARS OF INTEREST CLAIMED BY RUSSIA ON INDEMNITIES DUE INDIVIDUALS INJURED IN THE WAR OF 1877-1878

COMPROMIS, JULY 22/AUGUST 4, 1910

SESSIONS, FEBRUARY 15, 1911-NOVEMBER 6, 1912, THE HAGUE

AWARD NOVEMBER 11, 1912

ARBITRATORS, LARDY, TAUBE, MANDELSTAM,¹ HERANTE ABRO BEY,¹ AHMED RÉCHID BEY¹

COMPROMIS D'ARBITRAGE ENTRE LE GOUVERNEMENT IMPÉRIAL RUSSE ET LE GOUVERNEMENT IMPÉRIAL OTTOMAN SIGNÉ À CONSTANTINOPLE LE 22 JUILLET/4 AOÛT 1910

Le Gouvernement Impérial Russe et le Gouvernement Impérial Ottoman, cosignataires de la Convention de La Haye du 18 octobre 1907 pour le règlement pacifique des conflits internationaux :

Considérant les dispositions de l'Article 5 du Traité signé à Constantinople entre la Russie et la Turquie, le 27 janvier/8 février 1879, ainsi conçu :

„Les réclamations des sujets et institutions russes en Turquie à „titre d'indemnité pour les dommages subis pendant la guerre seront „payées à mesure qu'elles seront examinées par l'Ambassade de „Russie à Constantinople et transmises à la Sublime Porte”

„La totalité de ces réclamations ne pourra en aucun cas dépasser „le chiffre de 26,750,000 francs”

„Le terme d'une année après l'échange des ratifications est fixé

¹ Not members of Permanent Court. Special Tribunal.

COMPROMIS OF ARBITRATION BETWEEN THE IMPERIAL GOVERNMENT OF RUSSIA AND THE IMPERIAL OTTOMAN GOVERNMENT
SIGNED AT CONSTANTINOPLE, JULY 22/AUGUST 4, 1910

The Imperial Government of Russia and the Imperial Ottoman Government, cosignatories of the Hague Convention of October 18, 1907 for the Pacific Settlement of International Disputes :

Considering the provisions of Article 5 of the Treaty signed at Constantinople between Russia and Turkey, January 27/February 8, 1879, thus stated :

“The claims of Russian subjects and institutions in Turkey on the score of indemnity for the damages suffered during the war will be paid according as they shall be examined by the Russian Embassy at Constantinople and forwarded to the Sublime Porte.”

“The total of these claims shall not in any case exceed the sum of 26,750,000 francs.”

“The end of one year after the exchange of ratifications is fixed

„comme date à partir de laquelle les réclamations pourront être
„présentées à la Sublime Porte, et celui de deux ans comme
„date après laquelle les réclamations ne seront plus admises”;

Considérant l'explication additionnelle insérée au Protocole de même date portant :

„Quant au terme d'une année fixé par cet Article comme date à
„partir de laquelle les réclamations pourront être présentées à la
„Sublime Porte, il est entendu qu'une exception y sera faite en
„faveur de la réclamation de l'Hôpital Russe s'élevant à la somme
„de 11,200 livres sterlings”;

Considérant qu'un désaccord s'est élevé entre le Gouvernement Impérial Russe et le Gouvernement Impérial Ottoman relativement aux conséquences de droit résultant des dates auxquelles le Gouvernement Impérial Ottoman a effectué, sur les montants des indemnités régulièrement présentées en exécution dudit Article 5, les paiements ci-après, savoir :

	livr. turq.	pi.	par.
En 1884	50,000	—	—
En 1889	50,000	—	—
En 1893	75,000	—	—
En 1894	50,000	—	—
En 1902	42,438	67	½

Considérant que le Gouvernement Impérial Russe soutient que le Gouvernement Impérial Ottoman est responsable de dommages-intérêts à l'égard des indemnitaires russes pour le retard apporté au règlement de sa dette;

Considérant que le Gouvernement Impérial Ottoman conteste, tant en fait qu'en droit, le bien-fondé de la prétention du Gouvernement Impérial Russe;

Considérant que le litige n'a pu être réglé par la voie diplomatique;

Et ayant résolu, conformément aux stipulations de ladite Convention de La Haye, de terminer ce différend en soumettant la question à un Arbitrage;

Ont, à cet effet, autorisé leurs Représentants ci-dessous désignés, savoir :

as the date after which claims may be presented to the Sublime Porte, and the end of two years as the date after which no further claims will be admitted."

Considering the additional explanation inserted in the protocols of the same date stating:

"Concerning the end of one year fixed by this article as the date from which claims may be presented to the Sublime Porte, it is understood that an exception will be made thereto in favor of the claims of the Russian hospital amounting to the sum of 11,200 pounds sterling."

Considering that a disagreement has arisen between the Imperial Government of Russia and the Imperial Ottoman Government respectively as to consequences resulting from the dates at which the Imperial Ottoman Government has effected, on the amounts of the indemnities presented in accordance with the said Article 5, the following payments, namely:

	pounds Turkish	pl.	par.
In 1884	50,000	—	—
In 1889	50,000	—	—
In 1893	75,000	—	—
In 1894	50,000	—	—
In 1902	42,438	67	½

Considering that the Imperial Government of Russia holds that the Imperial Ottoman Government is responsible for interest-damages with regard to Russian indemnities for the delay incident to the settlement of its debt;

Considering that the Imperial Ottoman Government denies, both in fact and in law, the foundation of the pretension of the Imperial Government of Russia;

Considering that the dispute could not be settled by diplomatic means;

and having resolved, in conformity with the stipulations of the said Hague Convention, to terminate this difference by submitting the question to arbitration;

Have for this purpose, authorized their representatives, the undersigned, namely:

pour la Russie,

Son Excellence Monsieur Tcharykow, Ambassadeur de Sa Majesté l'Empereur de Russie à Constantinople ;

pour la Turquie,

Son Excellence Rifaat Pacha, Ministre des Affaires étrangères,
A conclure le Compromis suivant :

ARTICLE PREMIER

Les Puissances en litige décident que le Tribunal Arbitral auquel la question sera soumise en dernier ressort sera composé de cinq membres, lesquels seront désignés de la manière suivante :

Chaque Partie, aussitôt que possible, et dans un délai qui n'excédera pas deux mois à partir de la date de ce Compromis, devra nommer deux Arbitres, et les quatre Arbitres ainsi désignés choisiront ensemble un Sur-Arbitre. Dans le cas où les quatre Arbitres n'auront pas, dans le délai de deux mois après leur désignation, choisi à l'unanimité ou à la majorité un Sur-Arbitre, le choix du Sur-Arbitre est confié à une Puissance tierce désignée de commun accord par les Parties. Si, dans un délai de deux autres mois, l'accord ne s'établit pas à ce sujet, chaque Partie désigne une Puissance différente et le choix du Sur-Arbitre est fait de concert par les Puissances ainsi désignées.

Si, dans un délai de deux autres mois, ces deux Puissances n'ont pu tomber d'accord, chacune d'elles présente deux candidats pris sur la liste des membres de la Cour Permanente en dehors des membres de ladite Cour désignés par ces deux Puissances ou par les Parties, et n'étant les nationaux ni des uns ni des autres. Ces candidats ne pourront, en plus, appartenir à la nationalité des Arbitres nommés par les Parties dans le présent Arbitrage. Le sort détermine lequel des candidats ainsi présentés sera le Sur-Arbitre.

Le tirage au sort sera effectué par les soins du Bureau International de la Cour Permanente de La Haye.

ART. 2

Les Puissances en litige se feront représenter auprès du Tribunal Arbitral par des agents, conseils ou avocats, en conformité des

For Russia,
His Excellency Monsieur Tcharykow, ambassador of His Majesty
the Emperor of Russia at Constantinople;
For Turkey,
His Excellency Rifaat Pacha, Minister of Foreign Affairs,
To conclude the following Compromis :

ARTICLE I

The powers in litigation decide that the Arbitral Tribunal to which the question will be submitted as a last resort, shall be composed of five members who shall be appointed in the following manner :

Each party, as soon as possible, within a period not exceeding two months after the date of this Compromis, shall name two arbitrators, and the four arbitrators thus appointed shall choose together an umpire. In case that the four arbitrators shall not, in the course of two months after their appointment, have chosen unanimously or by majority, an umpire, the choice of an umpire is entrusted to a third power appointed by common accord of the parties. If, in the course of two months more, no agreement on this subject is reached, each party appoints a different power and the choice of the umpire is to be made jointly by the powers thus appointed.

If, within the period of two months more, these two powers have not been able to reach an agreement, each of these suggests two candidates taken from the list of members of the Permanent Court, exclusive of the members of said Court designated by the two powers or by the parties, and being nationals of neither the one nor the other. The candidates should not, moreover, belong to the nationality of the arbitrators named by the parties to the present arbitration. The lot decides which of the candidates thus presented will be the umpire.

The drawing of the lot shall be conducted under the supervision of the International Bureau of the Permanent Court at The Hague.

ARTICLE 2

The powers in litigation will be represented before the tribunal of arbitration by agents, council or advocates, in accordance with

prévisions de l'Article 62 de la Convention de La Haye de 1907 pour le règlement pacifique des conflits internationaux.

Ces agents, conseils ou avocats seront désignés par les Parties à temps pour que le fonctionnement de l'Arbitrage ne subisse aucun retard.

ART. 3

Les questions en litige et sur lesquelles les Parties demandent au Tribunal Arbitral de prononcer une décisions définitive sont les suivantes :

I. Oui ou non, le Gouvernement Impérial Ottoman est-il tenu de payer aux indemnitaires russes des dommages-intérêts à raison des dates auxquelles ledit Gouvernement a procédé au paiement des indemnités fixées en exécution de l'article 5 du Traité du 27 janvier/ 8 février 1879, ainsi que du Protocole de même date ?

II. En cas de décision affirmative sur la première question, quel serait le montant de ces dommages-intérêts ?

ART. 4

Le Tribunal Arbitral, une fois constitué, se réunira à La Haye à une date qui sera fixée par les Arbitres, et dans le délai d'un mois à partir de la nomination du Sur-Arbitre. Après le règlement — en conformité avec le texte et l'esprit de la Convention de La Haye de 1907 — de toutes les questions de procédure qui pourraient surgir et qui ne seraient pas prévues par le présent Compromis, ledit Tribunal ajournera sa prochaine séance à la date qu'il fixera.

Toutefois, il reste convenu que le Tribunal ne pourra ouvrir les débats sur les questions en litige ni avant les deux mois, ni plus tard que les trois mois qui suivront la remise du Contre-Mémoire ou de la Contre-Réplique prévus par l'article 6 et éventuellement des conclusions stipulées à l'article 8.

ART. 5

La procédure arbitrale comprendra deux phases distinctes : l'instruction écrite et les débats qui consisteront dans le développement oral des moyens des Parties devant le Tribunal.

La seule langue dont fera usage le Tribunal et dont l'emploi sera autorisé devant lui sera la langue française.

the stipulations of Article 62 of the Convention of The Hague of 1907 for the Pacific Settlement of International Disputes.

The agents, council or advocates shall be appointed by the parties in time so that the carrying on of the arbitration may suffer no delay.

ARTICLE 3

The questions in dispute and upon which the parties request the tribunal of arbitration to give a definitive decision are the following :

1. Whether or not the Imperial Ottoman Government must pay to Russian indemnitees interest-damages because of the dates on which the said Government has proceeded to the payment of the indemnities fixed in carrying out Article 5 of the treaty of January 27/February 8, 1879, as well as the protocol of the same date ?

2. In case of an affirmative decision on the first question, what would be the amount of the interest-damages ?

ARTICLE 4

The tribunal of arbitration, when constituted, shall meet at The Hague at a date which shall be fixed by the arbitrators and within the period of one month from the naming of the umpire. After the settlement — in conformity with the text and the spirit of the Convention of The Hague of 1907 — of all questions which may have arisen and were not provided for by the present Compromis, the said tribunal shall adjourn its next meeting to a date which it will fix.

However, it is agreed that the tribunal will not open the oral discussions upon the questions in litigation before two months, nor later than three months which follow the submission of the counter-case or the counter-reply provided for by Article 6 and contingently stipulated in Article 8.

ARTICLE 5

The arbitral procedure will comprise two distinct phases : the written pleadings and the oral discussions which consist of the oral development of the pleas of the parties before the tribunal.

The only language of which the tribunal will make use and of which the use will be authorized before the tribunal will be French.

ART. 6

Dans le délai de huit mois au plus après la date du présent Compromis, le Gouvernement Impérial Russe devra remettre à chacun des membres du Tribunal Arbitral, en un exemplaire, et au Gouvernement Impérial Ottoman, en dix exemplaires, les copies complètes, écrites ou imprimées, de son Mémoire contenant toutes pièces à l'appui de sa demande et pouvant se référer aux deux questions visées par l'article 3.

Dans un délai de huit mois au plus tard après cette remise, le Gouvernement Impérial Ottoman devra remettre à chacun des membres du Tribunal, ainsi qu'au Gouvernement Impérial Russe, en autant d'exemplaires que ci-dessus, les copies complètes, manuscrites ou imprimées, de son Contre-Mémoire, avec toutes pièces à l'appui, mais pouvant se borner à la question n°. I de l'article 3.

Dans le délai d'un mois après cette remise, le Gouvernement Impérial Russe notifiera au Président du Tribunal Arbitral s'il a l'intention de présenter une Réplique. Dans ce cas, il aura un délai de trois mois au plus, à compter de cette notification, pour communiquer ladite Réplique dans les mêmes conditions que le Mémoire. Le Gouvernement Impérial Ottoman aura alors un délai de quatre mois, à compter de cette communication, pour présenter sa Contre-Réplique, dans les mêmes conditions que le Contre-Mémoire.

Les délais fixés par le présent article pourront être prolongés de commun accord par les Parties, ou par le Tribunal, quand il le juge nécessaire, pour arriver à une décision juste.

Mais le Tribunal ne prendra pas en considération les Mémoires, Contre-Mémoires ou autres communications qui lui seront présentées par les Parties après l'expiration du dernier délai par lui fixé.

ART. 7

Si, dans les mémoires ou autres pièces échangés, l'une ou l'autre Partie s'est référée ou a fait allusion à un document ou papier en sa possession exclusive, dont elle n'aura pas joint la copie, elle sera tenue, si l'autre Partie le demande, de lui en donner la copie, au plus tard dans les trente jours.

ARTICLE 6

Within a period of eight months at most after the date of the present Compromis, the Imperial Russian Government must deliver to each of the members of the arbitral tribunal, one copy of its case, and to the Imperial Ottoman Government ten copies, complete, written or printed, containing all papers in support of its suit and having reference to the two questions mentioned in Article 3.

Within a period of eight months at most after this delivery, the Imperial Ottoman Government must deliver to each of the members of the tribunal as well as to the Imperial Russian Government, as many copies of its counter-case as above, the copies complete in manuscript or printed, with all the papers in support, but confining attention to question No. 1 of Article 3.

Within the period of three months after this delivery, the Imperial Russian Government will notify the President of the arbitral tribunal if it intends to present a reply. If such is the case, it will have a period of three months more, reckoned from that notification, for communicating the said reply under the same conditions as the case. The Imperial Ottoman Government will then have a period of four months, reckoned from this communication for presenting its counter-reply, under the same conditions as the counter-case.

The periods prescribed in the present article may be prolonged by common agreement by the parties, or by the tribunal, when it judges it necessary, in order to reach a just decision.

But the tribunal will not take into consideration the cases, counter-cases or other communications which shall be presented to it by the parties after the expiration of end of the period fixed by the tribunal.

ARTICLE 7

If in the cases or other papers exchanged, either party refers or makes allusion to a document or paper in its exclusive possession of which it has not annexed a copy, it will be obliged, if the other party requests it, to furnish a copy, at the latest within thirty days.

ART. 8

Dans le cas où le Tribunal Arbitral aurait affirmativement statué sur la question posée au n°. I de l'article 3, il devra, avant d'aborder l'examen du n°. II du même article, donner aux Parties de nouveaux délais ne pouvant être inférieurs à trois mois chacun, pour présenter et échanger leurs conclusions et arguments à l'appui.

ART. 9

Les décisions du Tribunal sur la première, et éventuellement sur la seconde question en litige, seront prononcées, autant que possible, dans le délai d'un mois après la clôture par le Président des débats relatifs à chacune de ces questions.

ART. 10

Le jugement du Tribunal Arbitral sera définitif et devra être exécuté strictement et sans aucun retard.

ART. 11

Chaque Partie supporte ses propres frais et une part égale des frais du Tribunal.

ART. 12

En tout ce qui n'est pas prévu par le présent Compromis, les stipulations de la Convention de La Haye de 1907 pour le règlement pacifique des Conflits internationaux seront appliquées à cet Arbitrage, à l'exception, toutefois, des articles dont l'acceptation a été réservée par le Gouvernement Impérial Ottoman.

Fait à Constantinople, le 22 juillet/4 août 1910.

(Signé) : N. TCHARYKOW

(Signé) : RIFAAT

ARTICLE 8

If the arbitral tribunal shall have decided affirmatively upon the question stated in No. 1 of Article 3, it must, before proceeding to examine No. 2 of the same article, grant to the parties new periods which may not be less than three months each, for presenting and exchanging their conclusions and arguments in support.

ARTICLE 9

The awards of the tribunal upon the first, and contingently on the second question in dispute, will be pronounced as soon as possible, within a period of one month after the closing by the president of the oral discussion relating to each of the questions.

ARTICLE 10

The award of the arbitral tribunal will be definitive and must be executed strictly and without any delay.

ARTICLE 11

Each party bears its own expenses and an equal part of the expenses of the tribunal.

ARTICLE 12

In all matters not provided for by the present Compromis, the provisions of the Convention of The Hague of 1907 for the pacific settlement of international disputes will apply to this arbitration, with the exception, however, of the articles whose acceptance has been reserved by the Imperial Ottoman Government.

Done at Constantinople, July 22/August 4, 1910

(Signed): N. TCHARYKOW

(Signed): RIFAAT

SENTENCE RENDUE LE 11 NOVEMBRE 1912 PAR LE TRIBUNAL ARBITRAL CONSTITUÉ EN VERTU DU COMPROMIS D'ARBITRAGE SIGNÉ À CONSTANTINOPLE ENTRE LA RUSSIE ET LA TURQUIE LE 22 JUILLET /4 AOÛT 1910

Par un Compromis signé à Constantinople le 22 juillet / 4 août 1910, le Gouvernement Impérial de Russie et le Gouvernement Impérial Ottoman sont convenus de soumettre à un Tribunal arbitral la décision définitive des questions suivantes :

- „I. Oui ou non, le Gouvernement Impérial Ottoman „est-il tenu de payer aux indemnitaires russes des „dommages-intérêts à raison des dates auxquelles ledit „gouvernement a procédé au payement des indemnités „fixées en exécution de l'article 5 du traité du 27 janvier/ „8 février 1879, ainsi que du Protocole de même date ?”
- „II. En cas de décision affirmative sur la première ques- „tion, quel serait le montant de ces dommages-intérêts ?”

Le Tribunal arbitral a été composé de

Son Excellence Monsieur Lardy, Docteur en droit, Membre et ancien Président de l'Institut de droit international, Envoyé extraordinaire et Ministre plénipotentiaire de Suisse à Paris, Membre de la Cour Permanente d'Arbitrage, Surarbitre ;

Son Excellence le Baron Michel de Taube, Adjoint du Ministre de l'Instruction publique de Russie, Conseiller d'Etat actuel, Docteur en droit, associé de l'Institut de droit international, Membre de la Cour Permanente d'Arbitrage ;

Monsieur André Mandelstam, Premier Drogman de l'Ambassade Impériale de Russie à Constantinople, Conseiller d'Etat, Docteur en droit international, associé de l'Institut de droit international ;

Herante Abro Bey, Licencié en droit, Conseiller légiste de la Sublime-Porte ;

et Ahmed Réchid Bey, Licencié en droit, Conseiller légiste de la Sublime-Porte ;

Monsieur Henri Fromageot, Docteur en droit, associé de l'Institut de droit international, Avocat à la Cour d'Appel de Paris, a fonctionné comme Agent du Gouvernement Impérial Russe et a été assisté de

AWARD RENDERED NOVEMBER 11, 1912, BY THE ARBITRAL TRIBUNAL
CONSTITUTED BY VIRTUE OF THE ARBITRATION COMPROMIS SIGNED
AT CONSTANTINOPLE BETWEEN RUSSIA AND TURKEY, JULY 22/
AUGUST 4, 1910

By a *compromis* signed at Constantinople July 22/August 4, 1910, the Imperial Government of Russia and the Imperial Ottoman Government agreed to submit to an arbitral tribunal the definitive decision of the following questions :

I. Whether or not the Imperial Ottoman Government is bound to pay to the Russian indemnitees interest-damages by reason of the dates on which the said government has proceeded to the payment of the indemnities agreed upon in carrying out Article 5 of the Treaty of January 27/February 8, 1879, as well as of the Protocol of the same date ?

II. In case of an affirmative decision on the first question, what would be the amount of these interest-damages ?

The arbitral tribunal was composed of

His Excellency Monsieur Lardy, Doctor of Laws, member and former president of the Institute of International Law, Envoy Extraordinary and Minister Plenipotentiary of Switzerland at Paris, member of the Permanent Court of Arbitration, umpire ;

His Excellency Baron Michael von Taube, Assistant Minister of Public Instruction of Russia, Councilor of State, Doctor of Laws, associate of the Institute of International Law, member of the Permanent Court of Arbitration ;

Monsieur André Mandelstam, First Dragoman of the Imperial Embassy of Russia at Constantinople, Councilor of State, Doctor of International Law, associate of the Institute of International Law ;

Herante Abro Bey, Licentiate in Law, Legal Counsellor of the Sublime Porte ;

and Ahmed Réchid Bey, Licentiate in Law, Legal Counsellor of the Sublime Porte ;

Monsieur Henri Fromag  t, Doctor of Laws, associate of the Institute of International Law, advocate in the Court of Appeals of Paris, acted as agent of the Imperial Russian Government and was assisted by

Monsieur Francis Rey, Docteur en droit, Secrétaire de la Commission Européenne du Danube, en qualité de Secrétaire ;

Monsieur Edouard Clunet, Avocat à la Cour d'Appel de Paris, Membre et ancien Président de l'Institut de droit international, a fonctionné comme Agent du Gouvernement Impérial Ottoman et a été assisté de

Monsieur Ernest Roguin, Professeur de Législation comparée à l'Université de Lausanne, Membre de l'Institut de droit international, en qualité de Conseil du Gouvernement Ottoman ;

Monsieur André Hesse, Docteur en droit, Avocat à la Cour d'Appel de Paris, Député, en qualité de Conseil du Gouvernement Ottoman ;

Youssef Kémâl Bey, Professeur à la Faculté de droit de Constantinople, ancien Député, Directeur de la Mission Ottomane d'études juridiques, en qualité de Conseil du Gouvernement Ottoman ;

Monsieur C. Campinchi, Avocat à la Cour d'Appel de Paris, en qualité de Secrétaire de l'Agent du Gouvernement Ottoman.

Le Baron Michiels van Verduynen, Secrétaire général du Bureau international de la Cour Permanente d'Arbitrage, a fonctionné comme Secrétaire général et

le Jonkheer W. Röell, Premier secrétaire du Bureau international de la Cour, a pourvu au Secrétariat.

Après une première séance à La Haye le 15 février 1911, pour régler certaines questions de procédure, les Mémoire, Contre-Mémoire, Réplique et Contre-Réplique ont été dûment changés entre les Parties et communiqués aux Arbitres, qui ont respectivement déclaré, ainsi que les Agents des Parties, renoncer à demander des compléments de renseignements.

Le Tribunal arbitral s'est réuni de nouveau à La Haye les 28, 29, 30, 31 octobre, 1er, 2, 5 et 6 novembre 1912,

et après avoir entendu les conclusions orales des Agents et Conseils des Parties, il a rendu la Sentence suivante :

Monsieur Francis Rey, Doctor of Laws, Secretary of the European Commission of the Danube, in the capacity of secretary ;

Monsieur Edouard Clunet, advocate in the Court of Appeals of Paris, member and former president of the Institute of International Law, acted as agent of the Imperial Ottoman Government and was assisted by

Monsieur Ernest Roguin, Professor of Comparative Legislation in the University of Lausanne, member of the Institute of International Law, in the capacity of counsel to the Ottoman Government ;

Monsieur André Hesse, Doctor of Laws, advocate in the Court of Appeals of Paris, in the capacity of counsel to the Ottoman Government ;

Youssef Kémâl Bey, Professor in the Faculty of Law of Constantinople, former deputy, Director of the Ottoman Commission of Juridical Studies ; in the capacity of counsel to the Ottoman Government ;

Monsieur C. Campinchi, advocate in the Court of Appeals of Paris, in the capacity of secretary to the agent of the Ottoman Government ;

Baron Michiels van Verduynen, Secretary General of the International Bureau of the Permanent Court of Arbitration, acted as Secretary General, and

Jonkheer W. Röell, First Secretary of the International Bureau of the Court, attended to the secretariat.

After a first session at The Hague, February 15, 1911, to settle certain questions of procedure, the cases, counter-cases, replies and counter-replies were duly exchanged by the parties and communicated to the arbitrators, who declared respectively, as well as the agents of the parties, that they waived any requests for supplementary information.

The arbitral tribunal met again at The Hague on October 28, 29, 30, 31, November 1, 2, 5, and 6, 1912, and after having heard the oral arguments of the agents and counsel of the parties, has rendered the following award :

QUESTION PRÉJUDICIELLE

Vu la demande préjudicielle du Gouvernement Impérial Ottoman tendant à faire déclarer la réclamation du Gouvernement Impérial Russe non recevable sans examen du fond, le Tribunal

attendu que le Gouvernement Impérial Ottoman base cette demande préjudicielle, dans ses conclusions écrites, sur le fait „que, „dans toute la correspondance diplomatique, ce sont les sujets russes „individuellement qui, bénéficiant d'une stipulation faite en leurs „noms, soit dans les Préliminaires de Paix signés à San Stéfano le „19 février 13 mars 1878, soit par l'article 5 du Traité de Constanti- „nople du 27 janvier 8 février 1879, soit par le Protocole du même „jour, ont été les créanciers directs des sommes capitales à eux „adjudgées, et que leurs titres à cet égard ont été constitués par les „décisions nominatives prises par la Commission *ad hoc* réunie à „l'Ambassade de Russie à Constantinople, décisions nominatives qui ont été notifiées à la Sublime-Porte ;

„Que, dans ces circonstances, le Gouvernement Impérial de Russie „aurait dû justifier de la survivance des droits de chaque indemni- „taire, et de l'individualité des personnes aptes à s'en prévaloir „aujourd'hui, cela d'autant plus que la cession de certains de ces „droits a été communiquée au Gouvernement Impérial Ottoman” ;

„Que le Gouvernement Impérial de Russie aurait dû agir de „même, dans l'hypothèse aussi où l'Etat russe aurait été le créancier „direct unique des indemnités ; cela parce que le dit Gouvernement „ne saurait méconnaître son devoir de transmettre aux indemni- „taires ou à leurs ayants-cause les sommes qu'il pourrait obtenir „dans le procès actuel à titre de dommages-intérêts moratoires, les „indemnitaires se présentant, dans cette supposition, comme les „bénéficiaires, sinon comme les créanciers, de la stipulation faite „dans leur intérêt ;

„Que cependant, le Gouvernement Impérial de Russie n'a fourni „aucune justification quant à la personnalité des indemnitaires ou de „leurs ayants-droit, ni quant à la survivance de leurs prétentions.”
(Contre-Réplique Ottomane p. 81 et 82).

Attendu que le Gouvernement Impérial de Russie soutient, au contraire, dans ses conclusions écrites,

PRELIMINARY QUESTION

Considering the preliminary request of the Imperial Ottoman Government that the claim of the Imperial Russian Government be declared inadmissible without examining the basis, the tribunal,

considering that the Imperial Ottoman Government rests this preliminary request, in its written arguments, upon the fact "that in all the diplomatic correspondence it is the Russian subjects individually, benefiting by a stipulation made in their names, either in the preliminaries of peace signed at San Stefano February 19/March 3, 1878, or by Article 5 of the treaty of Constantinople of January 27/February 8, 1879, or by the protocol of the same date, who were the direct creditors for the principal sums adjudged to them, and that their rights in this respect were established by the designative decisions of the commission *ad hoc* set up at the Russian Embassy at Constantinople, designative decisions which were communicated to the Sublime Porte;

"That, under these circumstances, the Imperial Russian Government should have proved the reversion of the rights of each indemnitee and the identity of the persons entitled to avail themselves of these rights at the present time, more especially since the transfer of certain of these rights has been reported to the Imperial Ottoman Government;

"That the Imperial Russian Government should have done the same, even on the hypothesis that the Russian state was the only direct creditor as to the indemnities, inasmuch as the said government could not disregard its duty to transmit to the indemnitees or to their assigns the sums which it might obtain in the present suit as moratory interest-damages, the indemnitees appearing, upon this supposition, as beneficiaries, if not as creditors, of the stipulation made in their interest.

"That, however, the Imperial Russian Government furnished no proof as to the identity of the indemnitees or of their assigns, or as to the survival of their claims." (Turkish Counter-Reply, pp. 81 and 82.)

Considering that the Imperial Russian Government maintains, on the contrary, in its written arguments,

„Que la dette stipulée dans le Traité de 1879 n'en est pas moins
„une dette d'Etat à Etat ; qu'il n'en saurait être autrement de la
„responsabilité résultant de l'inexécution de la dite dette ; qu'en
„conséquence le Gouvernement Impérial Russe est seul qualifié
„pour en donner quittance et, par là-même, pour toucher les sommes
„destinées à être payées aux indemnitaires ; qu'au surplus, le
„Gouvernement Impérial Ottoman ne conteste pas au Gouverne-
„ment Impérial Russe la qualité de créancier direct de la Sublime-
„Porte ;

„Que le Gouvernement Impérial Russe agit en vertu du droit qui
„lui est propre de réclamer des dommages-intérêts en raison de
„l'inexécution d'un engagement pris vis-à-vis de lui directement ;

„Qu'il en justifie pleinement en établissant cette inexécution, qui
„n'est d'ailleurs pas contestée, et en apportant son titre, qui est le
„Traité de 1879 . . . ;

„Que la Sublime-Porte, nantie de la quittance à elle régulièrement
„délivrée par le Gouvernement Impérial Russe, n'a pas à s'immiscer
„dans la répartition des sommes distribuées ou à distribuer par ledit
„Gouvernement entre ses sujets indemnitaires ; que c'est là une
„question d'ordre intérieur, dont le Gouvernement Impérial Otto-
man n'a pas à connaître” ; (Réplique Russe pages 49 et 50).

Considérant que l'origine de la réclamation remonte à une guerre,
fait international au premier chef ; que la source de l'indemnité est
non seulement un Traité international mais un Traité de paix et les
accords ayant pour objet l'exécution de ce Traité de paix ; que ce
traité et ces accords sont intervenus entre la Russie et la Turquie
régulant entre elles, d'Etat à Etat, comme Puissances publiques et
souveraines, une question de droit des gens ; que les préliminaires de
paix ont fait rentrer les 10 millions de roubles attribués à titre de
dommages et intérêts aux sujets russes victimes des opérations de
guerre en Turquie au nombre des indemnités „que S. M. l'Empereur
de Russie réclame et que la Sublime-Porte s'est engagée à lui rem-
bourser” ; que ce caractère de créance d'Etat à Etat a été confirmé
par le fait que les réclamations devaient être examinées par une
Commission exclusivement russe ; que le Gouvernement Impérial de
Russie a conservé la haute main sur l'attribution, l'encaissement
et la distribution des indemnités, en sa qualité de seul créancier ;

"That the debt specified in the treaty of 1879 is, none the less, a debt of state to state; that it could not be otherwise as to the responsibility resulting from the non-payment of the said debt; that consequently the Imperial Russian Government alone is qualified to receipt for it, and, similarly, to receive the sums set aside to be paid to the indemnitees; that, besides, the Imperial Ottoman Government does not deny to the Russian Government the title of direct creditor of the Sublime Porte;

"That the Imperial Russian Government is acting by virtue of a right which it possesses in claiming the interest-damages by reason of the non-fulfilment of an engagement made with it directly;

"That it fully proves this by establishing this non-fulfilment, which, moreover, is not disputed, and by bringing forward its title, which is the treaty of 1879 ;

"That the Sublime Porte, provided with the receipt regularly delivered to it by the Imperial Russian Government, has no concern in the allotment of the sums distributed or to be distributed by the said government among its subjects entitled to indemnity; that this is then a question of a domestic nature of which the Imperial Ottoman Government has not to take cognizance"; (Russian Reply, pp. 49 and 50).

Considering that the origin of the claim arises from a war, an international fact in the first degree; that the source of the indemnity is not only an international treaty but a treaty of peace and the agreements having for their object the execution of this treaty of peace; that this treaty and these agreements were between Russia and Turkey, settling between themselves, state to state, as public and sovereign Powers, a question of the law of nations; that the preliminaries of peace had regard to the ten million roubles allowed as damages and interest to Russian subjects who were victims of the operations of war in Turkey to the amount of the indemnities "which His Majesty the Emperor of Russia claims that the Sublime Porte bound itself to pay to him"; that this character of debt from state to state has been confirmed by the fact that the claims were to be examined by a purely Russian commission; that the Imperial Russian Government has reserved complete control in the matter of allotting, collecting and distributing the indemnities,

qu'il importe peu de savoir si, en théorie, la Russie a agi en vertu de son droit de protéger ses nationaux ou à un autre titre, du moment où c'est envers le Gouvernement Impérial Russe seul que la Sublime-Porte a pris ou a subi l'engagement réclamé d'elle ;

Considérant que l'exécution des engagements est, entre Etats comme entre particuliers, le plus sûr commentaire du sens de ces engagements ;

que, lors d'une tentative de l'administration Ottomane des Finances de percevoir, en 1885, sur une quittance donnée par l'Ambassade de Russie à Constantinople lors du payement d'un acompte, le timbre proportionnel exigé des particuliers par la législation ottomane, la Russie a immédiatement protesté et soutenu „que la dette était contractée par le Gouvernement Ottoman „vis-à-vis celui de Russie” et „non pas une simple créance „de particuliers découlant d'un engagement ou contrat privé” (Note verbale russe du 15/27 mars 1885, Mémoire Russe, annexe n°. 19 page 19) ; que la Sublime-Porte n'a pas insisté, et qu'en fait, les deux Parties ont constamment, dans leur pratique de plus de quinze ans, agi comme si la Russie était la créancière de la Turquie à l'exclusion des indemnitaires privés ;

que la Sublime-Porte a payé sans aucune exception tous les versements successifs sur la seule quittance de l'Ambassade de Russie à Constantinople agissant pour compte de son Gouvernement ;

que la Sublime-Porte n'a jamais demandé, lors des versements d'acomptes, si les bénéficiaires existaient toujours ou quels étaient leurs ayants-cause du moment, ni d'après quelles normes les acomptes étaient répartis entre eux, laissant cette mission au seul Gouvernement Impérial de Russie ;

Considérant que la Sublime-Porte prétend, au fond, dans le litige actuel, précisément être entièrement libérée par les payements qu'elle a, en fait, effectués en dehors de toute participation des indemnitaires entre les mains du seul Gouvernement Impérial de Russie représenté par son ambassade ;

PAR CES MOTIFS :

Arrête .

la demande préjudicielle est écartée.

in its capacity as sole creditor ; that it is of little consequence to know whether, in theory, Russia has acted by virtue of its right to protect its nationals or by some other right, since it is towards the Imperial Russian Government alone that the Sublime Porte assumed or undertook the obligation claimed ;

Whereas the fulfilment of engagements is, between states, as between individuals, the surest commentary on the meaning of these engagements ;

That, then from an attempt of the Ottoman financial department in 1885 to collect, upon a receipt given by the Russian Embassy at Constantinople for a payment on account, the proportional stamp-tax required from individuals by the Ottoman law, Russia immediately protested and maintained "that the debt was contracted by the Ottoman Government with that of Russia" . . . and "not a simple debt between individuals arising from a private engagement or contract" (Russian note of March 15/27, 1885, Russian Memorandum, Appendix No. 19, p. 19) ; that the Sublime Porte did not insist, and that in fact the two parties have constantly in practice, for more than fifteen years, acted as if Russia was the creditor of Turkey to the exclusion of private indemnitees ;

That the Sublime Porte has made without a single exception all the successive payments solely upon the receipt of the Russian Embassy at Constantinople, acting in behalf of its government ;

That the Sublime Porte has never asked, at the time of payments on account, if the beneficiaries were still living or who were their assigns at the time, nor according to what rules the payments on account were divided among them, leaving this duty entirely to the Imperial Russian Government ;

Whereas the Sublime Porte maintains, in the main, in the present litigation, particularly that it is fully released by the payments which it has, in fact, without any participation of the indemnitees, made to the Imperial Russian Government alone represented by its Embassy,

FOR THESE REASONS

Decides

the preliminary request is set aside.

Statuant ensuite

SUR LE FOND

le Tribunal arbitral a rendu la Sentence suivante :

I

EN FAIT

Dans le Protocole signé à Andrinople le 19/31 janvier 1878 et qui a mis fin par un armistice aux hostilités entre la Russie et la Turquie, se trouve la stipulation suivante :

„5°. La Sublime-Porte s'engage à dédommager la
„Russie des frais de la guerre et des pertes qu'elle a dû
„s'imposer. Le mode, soit pécuniaire, soit territorial ou
„autre, de cette indemnité sera réglé ultérieurement.”

L'article 19 des Préliminaires de paix signés à San Stefano le 19 février/3 mars 1878 est ainsi conçu :

„Les indemnités de guerre et les pertes imposées à la
„Russie que S. M. l'Empereur de Russie réclame et que la
„Sublime-Porte s'est engagée à lui rembourser se composent
„de : a) 900 millions de roubles de frais de guerre . . .
„b) 400 millions de roubles de dommages infligés au littoral
„méridional . . . c) 100 millions de roubles de dommages
„causés au Caucase . . . d) *dix millions de roubles de*
„*dommages et intérêts aux sujets et institutions russes en*
„*Turquie* : total 1400 millions de roubles.”

Et plus loin : „*Les dix millions de roubles réclamés comme*
„*indemnité pour les sujets et institutions russes en Turquie*
„*seront payés à mesure que les réclamations des intérêts*
„*seront examinées par l'ambassade de Russie à Constanti-*
„*nople et transmises à la Sublime-Porte.*”

Au congrès de Berlin, à la séance du 2 juillet 1878, protocole N°. 11, il fut entendu que les 10 millions de roubles dont il s'agit ne regardaient pas l'Europe, mais seulement les deux Etats intéressés, et qu'ils ne seraient pas insérés dans le traité entre les Puissances représentées à Berlin. En conséquence la question fut reprise directement entre la Russie et la Turquie, qui stipulèrent, dans

Deciding then

UPON THE MAIN QUESTION

the arbitral tribunal has given the following award :

I

AS TO FACT

In the protocol signed at Adrianople January 19/31, 1878, which put an end by an armistice to hostilities between Russia and Turkey, there is the following stipulation :

5. The Sublime Porte engages to indemnify Russia for the expense of the war and for the losses that it has had to bear. The character of this indemnity, whether pecuniary, territorial or other, will be arranged later.

Article 19 of the preliminaries of peace signed at San Stefano February 19/March 3, 1878, is thus stated :

The war indemnities and the losses borne by Russia which His Majesty the Emperor of Russia claims, and which the Sublime Porte has engaged to pay to him, consist of: (a) 900 million roubles, war expenses; . . . (b) 400 million roubles, damages inflicted upon the southern coast; . . . (c) 100 million roubles, damages done in the Caucasus; . . . (d) *ten million roubles, damages and interest, to Russian subjects and institutions in Turkey*: total 1400 million roubles.

And further on :

The ten million roubles claimed as indemnity for Russian subjects and institutions in Turkey shall be paid according as the claims of those interested are examined by the Russian Embassy at Constantinople and transmitted to the Sublime Porte.

At the Congress of Berlin, at the session of July 2, 1878, Protocol No. 11, it was understood that the ten million roubles in question did not concern Europe but only the two states interested, and that they would not be put in the treaty between the Powers represented at Berlin. Consequently the question was again taken up directly between Russia and Turkey, who stipulated, in the definitive treaty

le traité définitif de paix signé à Constantinople le 27 janvier/8 février 1879, la disposition suivante :

„Art. V. — Les réclamations des sujets et institutions russes en Turquie à titre d'indemnité pour les dommages subis pendant la guerre seront payées à mesure qu'elles seront examinées par l'ambassade de Russie à Constantinople et transmises à la Sublime-Porte. La totalité de ces réclamations ne pourra, en aucun cas, dépasser le chiffre de vingt-six millions sept cent cinquante mille francs. Le terme d'une année après l'échange des ratifications est fixé comme date à partir de laquelle les réclamations pourront être présentées à la Sublime-Porte, et celui de deux ans comme date après laquelle les réclamations ne seront plus admises.”

Le même jour, 27 janvier/8 février 1879, dans le Protocole de signature du traité de paix, le Plénipotentiaire russe prince Lobanow déclara que la somme de 26,750,000 francs spécifiée à l'article V :

„constitue un maximum auquel la totalité des réclamations ne pourra vraisemblablement jamais atteindre; il ajoute qu'une commission ad hoc sera instituée à l'ambassade de Russie pour examiner scrupuleusement les réclamations qui lui seront présentées, et que, d'après les instructions de son Gouvernement, un délégué ottoman pourra prendre part à l'examen de ces réclamations.”

Les ratifications du traité de paix ont été échangées à Saint-Pétersbourg le 9/21 février 1879.

La commission instituée à l'ambassade de Russie et composée de trois fonctionnaires russes commença aussitôt ses travaux. Le commissaire ottoman s'abstint généralement d'y prendre part. Le montant des pertes des sujets russes fut fixé par la commission à 6 millions 186,543 francs. Elles furent successivement notifiées à la Sublime-Porte entre le 22 octobre/3 novembre 1880 et le 29 janvier/10 février 1881; leur montant ne fut pas contesté et l'ambassade de Russie réclama le paiement en même temps qu'elle

of peace signed at Constantinople January 27/February 8, 1879, the following condition :

Art. 5. — The claims of Russian subjects and institutions in Turkey to a right to indemnity for damages suffered during the war will be paid so far as they are examined by the Russian Embassy at Constantinople and transmitted to the Sublime Porte. The total of these claims shall in no case exceed 26,750,000 francs. The end of one year after the exchange of ratifications is fixed as the date after which claims may be presented to the Sublime Porte, and the end of two years as the date after which claims will no longer be admitted.

The same day, January 27/February 8, 1879, in the signatory protocol of the treaty of peace, the Russian plenipotentiary, Prince Lobanow, declared that the sum of 26,750,000 francs specified in Article V

constitutes a maximum to which the total claims could probably never reach; he adds that a commission ad hoc will be set up at the Russian Embassy to examine scrupulously the claims which are presented to it, and that, according to the instructions of his government, an Ottoman delegate can take part in the examination of these claims.

Ratifications of the treaty of peace were exchanged at St. Petersburg February 9/21, 1879.

The commission set up at the Russian Embassy and composed of three Russian officials immediately began its labors. The Ottoman commissioner generally abstained from taking part. The amount of the losses of Russian subjects was fixed by the commission at 6,186,543 francs. These were successively communicated to the Sublime Porte between October 22/November 3, 1880, and January 29/February 10, 1881. The amount was not contested and the Russian Embassy made claim for the payment at the same time that

transmettait à la Sublime-Porte les dernières décisions de la commission.

Le 23 septembre 1881, l'ambassade transmet une „pétition” de l'avocat Rossolato, „mandataire spécial de plusieurs sujets russes” ayant à toucher des indemnités, pétition adressée à l'ambassade et mettant le Gouvernement Ottoman en demeure de s'entendre avec lui „dans un délai de huit jours à partir de la signification, sur le „mode de paiement,” déclarant „le tenir d'ores et déjà responsable „de tous dommages-intérêts et notamment des intérêts moratoires.”

Par convention signée à Constantinople le 2/14 mai 1882, les deux gouvernements conviennent, art. I^{er}, que l'indemnité de guerre, dont le solde avait été fixé à 802,500,000 francs par l'art. IV du traité de paix de 1879 après défalcation de la valeur des territoires cédés par la Turquie, ne porterait pas d'intérêts et serait payée sous forme de cent versements annuels de 350,000 livres turques soit environ 8 millions de francs.

Le 19 juin/1^{er} juillet 1884, aucune somme n'ayant été versée pour les indemnitaires, l'ambassade „réclame formellement le paiement „intégral des indemnités qui ont été adjugées aux sujets russes . . . ; „elle se verra obligée, dans le cas contraire, à leur reconnaître „la faculté de prétendre, outre le capital, à des intérêts proportionnés au retard que subit le règlement de leur créance.”

Le 19 décembre 1884, la Sublime-Porte verse un premier acompte de 50,000 livres turques, soit environ 1,150,000 fr.

En 1885 se produit l'union de la Bulgarie et de la Roumélie orientale et la guerre serbo-bulgare. La Turquie ne paie aucun nouvel acompte. Une note de rappel en date de janvier 1886 ayant été sans résultat, l'ambassade insiste, le 15/27 février 1887 ; elle transmet une „pétition” qui lui est parvenue d'indemnitaires russes, dans laquelle ils tiennent le Gouvernement Ottoman „responsable „de ce surcroît de dommages qui résulte pour eux du retard apporté au paiement de leurs indemnités,” et l'ambassade ajoute : „De nouveaux ajournements obligeront le Gouvernement Impérial à réclamer en faveur de ses nationaux des intérêts pour les „retards que subit le règlement de leurs créances.”

it transmitted to the Sublime Porte the final decisions of the commission.

September 23, 1881, the embassy transmitted a "petition" of the lawyer Rossolato, "special attorney for several Russian subjects" entitled to receive indemnities, a petition addressed to the embassy and serving notice that the Ottoman Government should agree with it "within a period of eight days from notification, as to the method of payment," declaring "that Government held now and henceforth responsible for all interest damages, especially for the moratory interest."

By a convention signed at Constantinople May 2/14, 1882, the two governments agreed, Article 1, that the war indemnity, of which the amount was fixed at 802,500,000 francs by Article IV of the treaty of peace of 1879 after deducting the value of the territory ceded by Turkey, should bear no interest and should be paid in the form of one hundred annual instalments of 350,000 Turkish pounds, approximately 8,000,000 francs.

June 19/July 1, 1884, no sum having been paid for the indemnitees, the embassy "claims formally full payment of the indemnities which were adjudged to Russian subjects . . . ; it will be obliged, otherwise, to recognize their right to claim, besides the principal, interest proportional to the delay that the settlement of their claims suffers."

December 19, 1884, the Sublime Porte made a first payment on account, of 50,000 Turkish pounds, approximately 1,150,000 francs.

In 1885 occurred the union of Bulgaria and Eastern Roumelia and the Serbo-Bulgarian war. Turkey made no further payment on account. A notification in January, 1886, having been without result, the embassy insisted, on February 15/27, 1887; it transmitted a "petition" sent to it by Russian indemnitees, in which they hold the Ottoman Government "responsible for this increase of damages which ensues to them by the delay experienced in the payment of their indemnities," and the embassy adds: "Further postponements will force the Imperial Government to claim in behalf of its nationals interest on account of the delays that the settlement of their claims suffers."

Après des notes de rappel de juillet et décembre 1887 demeurées sans effet, l'ambassade se plaint le 26 janvier/7 février 1888, de ce que la Turquie ait payé diverses créances postérieures aux obligations contractées envers les indemnitaires russes. Elle rappelle que „les arriérés se montent à la somme d'environ 215,000 livres „turques, un seul versement de 50,000 livres turques ayant été „fait sur le total de 265,000 livres turques adjudgées”; elle demande donc „d'urgence . . . que les sommes dues aux sujets russes „soient immédiatement, et avant tout autre paiement, prélevées „sur celles qui seront payées par X . . . ” (un débiteur du Gouvernement Impérial Ottoman).

Le 22 avril 1889, la Turquie verse un second acompte de 50,000 livres.

Le 31 décembre 1890/12 janvier 1891, l'ambassade, constatant qu'il a été payé seulement 100,000 livres sur un total de 265,000, écrit à la Sublime-Porte que le retard apporté au règlement de cette créance fait subir des pertes toujours croissantes aux nationaux russes; elle croit donc devoir prier la Sublime-Porte „de provoquer „des ordres immédiats à qui de droit pour que la somme due . . . soit „payée sans retard, *aussi bien que les intérêts légaux* au sujet des „quels [l'ambassade] a eu l'honneur de prévenir la Sublime-Porte „par note du 15/27 février 1887.”

En août 1891 nouveau rappel. En octobre/novembre 1892, l'ambassade écrit „que cela ne peut durer indéfiniment ainsi”; que „les instances des sujets russes deviennent de plus en plus pressantes,” que „l'ambassade a le devoir de s'en faire avec énergie „l'interprète, . . . qu'il s'agit là d'une obligation indiscutable et „d'un devoir international à remplir . . . ,” que „le Gouvernement Ottoman ne saurait plus invoquer pour s'y soustraire l'état „précaire de ses finances,” et conclut en demandant un „prompt et „définitif règlement de la créance”

Le 2/14 avril 1893, un troisième versement de 75,000 livres turques est effectué; la Sublime-Porte, en donnant avis de ce paiement dès le 27 mars, ajoute que, pour le reliquat, la moitié en sera inscrite au budget courant et l'autre moitié au budget prochain; „la question ainsi réglée met heureusement fin aux incidents auxquels „elle avait donné lieu.” La Porte espère dès lors que l'ambassade

After the notification of July and December, 1887, remained without effect, the embassy complained on January 26/February 7, 1888, that Turkey has paid various debts incurred subsequent to its obligations to Russian indemnitees. It recalled that "the arrears amount to the sum of about 215,000 Turkish pounds, a single payment of 50,000 Turkish pounds having been made on a total of 265,000 Turkish pounds awarded"; it then requested "urgently . . . that the sums due Russian subjects be immediately, and before every other payment, deducted from the amount paid by X . . ." (a debtor of the Imperial Ottoman Government).

April 22, 1889, Turkey made a second payment, on account, of 50,000 pounds.

December 31, 1890/January 12, 1891, the embassy, stating that it has been paid only 100,000 pounds on a total of 265,000, wrote to the Sublime Porte that the delay experienced in the settlement of this debt caused the Russian nationals to suffer continually increasing losses; it believes, therefore, that it ought to request the Sublime Porte "to authorize immediate orders to the proper person so that the sum due . . . may be paid without delay, *as well as the legal interest* in regard to which (the embassy) had the honor of notifying the Sublime Porte by note of February 15/27, 1887."

In August, 1891, a further notification was sent. In October/November, 1892, the embassy wrote "that affairs cannot continue indefinitely thus," that "the requests of Russian subjects are becoming more and more pressing," that "the embassy is obliged to act energetically as their representative, . . . that it is a question of an indisputable obligation and an international duty to be performed . . .", that "the Ottoman Government can no longer plead for excusing itself the precarious state of its finances," and concluded by demanding a "prompt and final settlement of the debt."

April 2/14, 1893, a third instalment of 75,000 Turkish pounds was paid; the Sublime Porte, in giving notice of this payment on March 27, adds that, as to the balance, half of it will be included in the current budget and the other half in the next budget; "the question thus settled brings happily an end to the incidents to which it had given rise." The Porte hoped, therefore, that the embassy would

voudra bien, dans ses sentiments d'amitié sincère à l'égard de la Turquie, accepter définitivement le monopole du tumbéki à l'instar des autres Puissances.

A cette occasion, et en rappelant que le Gouvernement Impérial Russe „s'est toujours montré amical et conciliant dans toutes les „affaires touchant aux intérêts financiers de l'Empire ottoman,” l'ambassade prend acte le 30 du même mois des dispositions annoncées en vue du paiement et consent à ce que les Russes faisant en Turquie le commerce des tumbéki soient soumis au régime nouvellement créé.

Un an plus tard, le 23 mai/4 juin 1894, n'ayant reçu aucun versement nouveau, l'ambassadeur, après avoir constaté la non-exécution de „l'arrangement” auquel il avait „consenti afin de „faciliter au Gouvernement Ottoman l'accomplissement de son „obligation,” se déclare „placé dans l'impossibilité d'accepter des „promesses, des arrangements ou des atermoiements ultérieurs,” et „obligé d'insister pour *que la totalité du reliquat* dû aux sujets russes, „*qui monte à 91.000 livres turques*, soit, sans plus de retard, versé „à l'ambassade . . . De récentes opérations financières viennent „de mettre à la disposition [de la Sublime-Porte] des sommes importantes.”

Le 27 octobre de la même année 1894, un versement de 50.000 livres turques est effectué, et la Sublime-Porte écrit, déjà le 3 du même mois, à l'ambassade: „Quant au reliquat de 41 mille livres „turques, la Banque Ottomane en garantira le paiement dans le „cours de l'exercice prochain.”

En 1896, une correspondance est échangée entre la Sublime-Porte et l'ambassade sur la question de savoir si les revenus sur lesquels la Banque Ottomane devait prélever le reliquat ne sont pas déjà engagés à la Russie pour le paiement de l'indemnité de guerre proprement dite ou si la partie de ces revenus supérieure à l'annuité affectée à l'indemnité de guerre ne peut pas être employée à l'indemnisation des sujets russes victimes des événements de 1877/8. Au cours de cette correspondance, la Sublime-Porte indique, dans les notes qu'elle adresse à l'ambassade les 11 février et 28 mai 1896, que le reliquat dû s'élève à la somme de 43.978 livres turques.

De 1895 à 1899, de graves événements survenus en Asie-Mineure

be willing, in its sentiments of sincere friendship towards Turkey, to accept definitively the *tumbéki* monopoly, in the manner of the other Powers.

On this occasion, and recalling that the Imperial Russian Government "has always shown itself friendly and conciliating in all its affairs pertaining to the financial interests of the Ottoman Empire," the embassy on the 30th of the same month took advantage of the terms announced for the payment, and consented that Russians engaged in the *tumbéki* trade in Turkey should be under the newly created arrangement.

A year later, May 23/June 4, 1894, not having received any further instalment, the ambassador, after having stated the non-performance of the "arrangement" to which he had "consented in order to facilitate the fulfilment of its obligation by the Ottoman Government," declared himself "placed where he is unable to accept further promises, arrangements or accommodations," and, "obliged to insist *that the total of the balance* due to Russian subjects, *which amounts to 91,000 Turkish pounds*, be, without further delay, paid to the embassy. . . . By recent financial operations there has just been placed at the disposal (of the Sublime Porte) large sums."

October 27 of the same year, 1894, an instalment of 50,000 Turkish pounds was paid, and the Sublime Porte wrote, as early as the third of the same month, to the embassy: "As to the balance of 41,000 Turkish pounds, the Ottoman Bank will guarantee payment duly from the next receipts."

In 1896, correspondence took place between the Sublime Porte and the embassy on the question whether the revenues from which the Ottoman Bank was to deduct the balance were not already pledged to Russia for payment of the war indemnity, properly so called, or whether that portion of the revenues above the annuity appropriated for the war indemnity could not be used as indemnity for Russian subjects victims of the events of 1877-8. In the course of this correspondence, the Sublime Porte pointed out, in the notes which it addressed to the embassy on February 11 and May 28, 1896, that the balance due amounted to the sum of 43,978 Turkish pounds.

From 1895 to 1899, serious events occurred in Asia Minor oblig-

obligent la Turquie à provoquer un moratoire en faveur de la Banque Ottomane sur sa demande; l'insurrection des Druses, celle de la Crète qui est suivie de la guerre turco-grecque de 1897, des insurrections en Macédoine amènent à diverses reprises la Turquie à mobiliser des troupes et même des armées.

Pendant trois ans, aucune correspondance n'est échangée, et, lorsqu'elle reprend, la Sublime-Porte indique de nouveau le chiffre de 43.978 livres turques, comme le montant du reliquat des indemnités, dans les notes qu'elle adresse à l'ambassade les 19 juillet 1899 et 5 juillet 1900. A son tour, l'ambassade, dans ses notes des 25 avril/8 mai 1900 et 3/16 mars 1901, indique le même chiffre mais se plaint de ce que les ordres donnés dans diverses provinces „pour „le paiement des 43.978 livres turques, montant du reliquat de „l'indemnité due aux sujets russes,” n'ont pas été suivis d'effet, et „de ce que la Banque Ottomane n'a rien versé; elle prie instamment „la Sublime-Porte de vouloir bien donner à qui de droit des ordres „catégoriques pour le paiement, sans plus de retard, des sommes „susmentionnées.”

Après qu'en mai 1901 la Sublime-Porte eut annoncé que le Département des Finances avait été invité à régler dans le courant du mois le reliquat de l'indemnité, la Banque Ottomane avisait enfin, les 24 février et 26 mai 1902, l'ambassade de Russie qu'elle avait reçu et tenait à la disposition de l'ambassade 42,438 livres turques sur le reliquat de 43.978 livres.

L'ambassade, en accusant deux mois plus tard réception de cet envoi à la Sublime-Porte le 23 juin/6 juillet 1902, faisait observer „que le Gouvernement Impérial Ottoman a mis plus de vingt ans „pour s'acquitter, et imparfaitement encore, d'une dette dont le „règlement immédiat s'imposait à tous les points de vue, un solde „de 1539 livres turques restant toujours impayé. Se référant, par „conséquent, à ses notes des 23 septembre 1881, 15/27 février 1887 „et 31 décembre 1890/12 janvier 1891 au sujet des intérêts à courir „sur la dite créance, restée si longtemps en souffrance” l'ambassade transmet une requête par laquelle les indemnitaires réclament, en substance, des intérêts composés à 12 % depuis le 1er janvier 1881 jusqu'au 15 mars 1887, et à 9% depuis cette date, à laquelle le taux de l'intérêt légal a été abaissé par une loi ottomane. La

ing Turkey to urge an extension in behalf of the Ottoman Bank, at its request; the insurrection of the Druses, that in Crete which was followed by the Graeco-Turkish war of 1897, insurrections in Macedonia, caused Turkey repeatedly to mobilize troops and even armies.

For three years no correspondence took place and when it was resumed the Sublime Porte again specified the sum of 43,978 Turkish pounds as the amount of the balance of the indemnities in notes which it addressed to the embassy July 19, 1899, and July 5, 1900. On its side, the embassy, in its notes of April 25/May 8, 1900, and March 3/16, 1901, specified the same sum, but complained that the orders given in various provinces "for the payment of the 43,978 Turkish pounds, the amount of the balance of the indemnity due Russian subjects," have not been of any effect, and that the Ottoman Bank has paid nothing; it "requests urgently the Sublime Porte kindly to give to the proper person definite orders for the payment, without further delay, of the above-mentioned sums."

In May, 1901, after the Sublime Porte had announced that the Department of Finance had been pressed to settle the balance of the indemnity during the course of the month, the Ottoman Bank at last advised the Russian Embassy on February 24 and May 26, 1902, that it had received and was holding at the order of the embassy 42,438 Turkish pounds on the balance of 43,978 pounds.

The embassy in acknowledging receipt of this notice two months later, June 23/July 6, 1902, to the Sublime Porte observed, "that the Imperial Ottoman Government has taken more than twenty years to discharge, and then incompletely, a debt the immediate settlement of which was required from every point of view, a balance of 1,539 Turkish pounds still remaining unpaid. Referring, therefore, to its notes of September 23, 1881, February 15/27, 1887, and December 31, 1890/January 12, 1891, on the matter of interest to run on the said debt, remaining so long in suspense," the embassy transmitted a petition by which the indemnitees claim, in substance, interest compounded at 12% from January 1, 1881, to March 15, 1887, and at 9% from that date, at which the legal rate of interest was reduced by an Ottoman law. The sum claimed

somme réclamée par les signataires s'élevait à une vingtaine de millions de francs au printemps de 1902 pour un capital primitif de 6,200,000 francs environ. La note se terminait comme suit : „L'ambassade impériale se plaît à croire que la Sublime-Porte „n'hésitera pas à reconnaître en principe le bien fondé de la réclamation exposée dans cette requête ; dans le cas pourtant où la Sublime-Porte trouverait des objections à soulever contre le montant „de la somme réclamée par les sujets russes, l'ambassade impériale „ne verrait pas d'inconvénients à déférer l'examen des détails à „une commission composée de délégués Russes et Ottomans.”

La Sublime-Porte répond le 17 de ce même mois de juillet 1902 que l'art. V du Traité de paix de 1879 et le protocole de même date ne stipulent pas d'intérêts et qu'à la lumière des négociations diplomatiques qui ont eu lieu à ce sujet, elle était loin de s'attendre à voir formuler au dernier moment de la part des indemnitaires de telles demandes, dont l'effet serait de rouvrir une question qui se trouvait heureusement terminée. L'ambassade réplique le 3/16 février 1903 en insistant „sur le payement des dommages-intérêts „réclamés par ses ressortissants. Il n'y a que le montant de ces „dommages qui pourrait faire l'objet d'une enquête.” — Sur une note de rappel en date du 2/15 août 1903, la Sublime-Porte répond le 4 mai 1904 en maintenant sa manière de voir et en se déclarant toutefois disposée à déférer la question à un arbitrage à La Haye dans le cas où l'on insisterait sur la réclamation.

Au bout de quatre ans, l'ambassade accepte cette suggestion par note du 19 mars/1er avril 1908.

Le compromis d'arbitrage a été signé à Constantinople le 22 juillet/4 août 1910.

Quant au petit solde de 1539 livres turques, il avait été mis par la Banque Ottomane en décembre 1902 à la disposition de l'ambassade de Russie qui l'a refusé et il demeure consigné à la disposition de l'ambassade.

II

EN DROIT .

1. Le Gouvernement Impérial de Russie base sa demande sur „la „responsabilité des Etats pour inexécution de dettes pécuniaires” ; cette responsabilité implique, selon lui, „l'obligation de payer des

by the signers amounted to some twenty million francs in the spring of 1902 on an original principal of about 6,200,000 francs. The note concluded as follows :

The Imperial Embassy is pleased to believe that the Sublime Porte will not hesitate to recognize in principle the just ground for the claim set forth in this petition ; in case, however, the Sublime Porte should find objections to raise against the amount of the sum claimed by the Russian subjects, the Imperial Embassy would see no inconvenience in referring the examination of the details to a commission composed of Russian and Ottoman delegates.

The Sublime Porte replied on the 17th of the same month, July, 1902, that Article V of the treaty of peace of 1879 and the protocol of the same date do not provide for interest, and that in the light of the diplomatic negotiations which have taken place on the subject, it was far from expecting to see at the last moment such demands advanced by the indemnitees, the effect of which would be to reopen a question which was happily closed. The embassy replied on February 3/16, 1903, insisting "upon payment of the interest-damages claimed by its subjects. It was only the amount of the damages which could be a matter for investigation." To a notification dated August 2/15, 1903, the Sublime Porte replied May 4, 1904, maintaining its point of view and declaring itself, however, disposed to submit the question to arbitration at The Hague, in case there should be insistence upon the claim :

At the end of four years the embassy accepted this suggestion by a note of March 19-April 1, 1908.

The compromis of arbitration was signed at Constantinople July 22/August 4, 1910.

As to the small sum of 1,539 Turkish pounds, it was, in December, 1902 placed by the Ottoman Bank at the order of the Russian Embassy, which refused it, and it remains deposited at the order of the embassy.

II

AS TO LAW

1. The Imperial Russian Government bases its demand upon "the responsibility of states for the non-payment of pecuniary debts"; this responsibility implies, according to it, "the obligation

„dommages-intérêts et spécialement les intérêts des sommes in-
„dûment retenues”; „l'obligation de payer des intérêts moratoires”
est „la manifestation pratique, en matière de dettes d'argent,”
de la responsabilité des Etats (Réplique Russe, pp. 27 et 51).
„La méconnaissance de ces principes serait aussi contraire à la
„notion même du droit des gens que dangereuse pour la sécurité
„des relations pacifiques; en effet, en déclarant l'Etat débiteur ir-
„responsable du délai qu'il inflige à son créancier, on lui reconnat-
„trait, par là même, la liberté de n'écouter que son caprice pour
„s'exécuter; . . . on obligerait, d'autre part, l'Etat créancier à
„recourir à la violence contre une semblable prétention . . . et à
„ne rien attendre d'un prétendu droit des gens manifestement
„incapable d'assurer le respect de la parole donnée.” (Mémoire
Russe, p. 29).

En d'autres termes, et toujours dans l'opinion du Gouverne-
ment Impérial de Russie, „il ne s'agit nullement ici d'intérêts
„conventionnels, c'est-à-dire nés d'une stipulation particulière . . .”
mais „l'obligation incombant au Gouvernement Impérial Ottoman
„de payer des intérêts moratoires est née du retard à exécuter,
„c'est-à-dire de l'inexécution partielle du Traité de paix; cette
„obligation est bien née, il est vrai, à l'occasion du traité de 1879,
„mais elle provient *ex post facto* d'une cause nouvelle et accidentelle,
„qui est la faute de la Sublime-Porte à remplir ses engagements
„comme elle s'y était obligée.” (Mémoire Russe, p. 29; Réplique
Russe, pp. 22 et 27.)

2. Le Gouvernement Impérial Ottoman, tout en admettant en
termes explicites le principe général de la responsabilité des Etats à
raison de l'inexécution de leurs engagements (Contre-Réplique,
p. 29, No. 286 Note et p. 52, No. 358), soutient, au contraire,
qu'en droit international public, des intérêts moratoires n'existent
pas „sans stipulation expresse” (Contre-Mémoire Ottoman, p. 31,
No. 83, et p. 34, No. 95); qu'un Etat „n'est pas un débiteur comme
„un autre” (Ibidem, p. 33, No. 90), et que, sans songer à soutenir
„qu'aucune règle observable entre particuliers ne puisse être ap-
„pliquée entre Etats” (Contre-Réplique Ottomane, p. 26, No. 275),
on doit tenir compte de la situation *sui generis* de l'Etat puissance
publique; que diverses législations (par exemple la loi française

to pay interest-damages and especially interest on sums unduly withheld"; "the obligation to pay moratory interest" is "practical proof, in the matter of money debts," of the responsibility of states (Russian Reply, pp. 27 and 51). "The disregard of these principles would be as contrary to the notion even of the law of nations as dangerous to the safety of peaceful relations; in fact, by declaring a debtor state not liable for the delay which it causes its creditor, there would be recognized, in that very way, the liberty of heeding only its own caprice in paying; . . . it would oblige, on the other hand, the creditor state to resort to violence against such a presumption. . . and to expect nothing from a pretended law of nations manifestly incapable of assuring regard for a pledged word." (Russian Case, p. 29.)

In other words, and still in the opinion of the Imperial Russian Government, "it is not at all a question here of conventional interest, that is to say, arising from a particular stipulation . . ." but "the obligation resting on the Imperial Ottoman Government to pay moratory interest arises from the delay in payment, that is to say, from the partial non-fulfilment of the treaty of peace; this obligation arose indeed, it is true, at the time of the treaty of 1879, but it proceeds *ex post facto* from a new and accidental cause, which is the failure of the Sublime Porte to fulfill obligations whereto it had pledged itself." (Russian Case, p. 29; Russian Reply, pp. 22 and 27.)

2. The Imperial Ottoman Government, while admitting in explicit terms the general principle of the responsibility of states on account of the non-fulfilment of their engagements (Counter-Reply, p. 29, No. 286, note, and p. 52, No. 358), maintains, on the contrary, that in public international law moratory interest does not exist "without express stipulation" (Ottoman Counter-Case, p. 31, No. 83, and p. 34, No. 95); that a state "is not a debtor like another" (*ibid.*, p. 33, No. 90), and that, without presuming to maintain "that no principle observable between individuals can be applied between states" (Ottoman Counter-Reply, p. 26, No. 275), there must be taken into account the position *sui generis* of the state public Power; that various legislative acts (for example, the French law

de 1831 qui institue une prescription extinctive de cinq ans pour les dettes de l'Etat, le droit romain qui pose le principe „*Fiscus ex suis contractibus usuras non dat*,” Lex 17, paragr. 5, Digeste 22, 1) reconnaissent à l'Etat débiteur une situation privilégiée (Contre-Mémoire Ottoman, p. 33, No. 92); qu'en admettant contre un Etat une obligation implicite, non expressément stipulée, en étendant par exemple à un Etat débiteur les règles de la mise en demeure et ses effets en droit privé, on rendrait cet Etat „débiteur „dans une mesure plus forte qu'il ne l'aurait voulu, risquerait de „compromettre la vie politique de l'Etat, de nuire à ses intérêts „primordiaux, de bouleverser son budget, de l'empêcher de se „défendre contre une insurrection ou contre l'étranger.” (Contre-Mémoire Ottoman, p. 33, No. 91.)

Eventuellement et pour le cas où une responsabilité devrait lui incomber, le Gouvernement Impérial Ottoman conclut à ce que cette responsabilité consiste uniquement en intérêts moratoires et cela seulement à partir d'une mise en demeure reconnue régulière. (Contre-Réplique Ottomane, pp. 71 et suivantes, Nos. 410 et suivants.)

Il oppose en outre les exceptions de la chose jugée, de la force majeure, du caractère de libéralité des indemnités, et de la renonciation tacite ou expresse de la Russie au bénéfice de la mise en demeure.

3. Les rapports de droit qui font l'objet du présent litige étant intervenus entre Etats Puissances publiques sujets du droit international et ces rapports rentrant dans le domaine du droit public, *le droit applicable est le droit international public* soit droit des gens et les Parties sont avec raison d'accord sur ce point. (Mémoire Russe p. 32; Contre-Mémoire Ottoman numéros 47 à 54, p. 18-20; Réplique Russe p. 18; Contre-Réplique Ottomane p. 17 numéros 244 et 245.)

4. La demande du Gouvernement Impérial de Russie est fondée sur le principe général de la responsabilité des Etats, à l'appui duquel il a invoqué un grand nombre de sentences arbitrales.

La Sublime-Porte, sans contester ce principe général, prétend échapper à son application en affirmant le droit des Etats à une situation exceptionnelle et privilégiée dans le cas spécial de la responsabilité en matière de dettes d'argent.

of 1831, which establishes an outlawry prescription of five years for state debts; the Roman law which lays down the principle "*Fiscus ex suis contractibus usuras non dat*," Lex 17, paragr. 5, Digest 22, 1) admit for the debtor state a privileged position (Ottoman Counter-Case, p. 33, No. 92); that in admitting against a state an implied obligation, not expressly stipulated, in extending, for example, to a debtor state the principles of a suit for payment and its effect in private law, this state would be made a "debtor to a degree greater than it would have desired, would risk compromising the political life of the state, by injuring its vital interests, overturning its budget, by preventing it from defending itself against an insurrection or against an alien." (Ottoman Counter-Case, p. 33, No. 91.)

Contingently and in case responsibility should rest upon it, the Imperial Ottoman Government concludes that this responsibility consists solely in moratory interest, and that only from the regularly recognized suit for payment. (Ottoman Counter-Reply, pp. 71 *et seq.*, Nos. 410, *et seq.*)

It presents, on the other hand, the exceptions of *res judicata*, of *force majeure*, of the gift character of the indemnities, and of the tacit or express renunciation by Russia of the benefit of the demand for payment.

3. The bearings of law which form the object of the present litigation, occurring between states as public powers subject to international law, and these bearings being within the province of public law, the law applicable is public international law, or the law of nations, and the parties are rightly in accord upon this point. (Russian Case, p. 32; Ottoman Counter-Case, Nos. 47 to 54, pp. 18-20; Russian Reply, p. 18; Ottoman Counter-Reply, p. 17, Nos. 244 and 245.)

4. The demand of the Imperial Russian Government is founded on the general principle of the responsibility of states, in support of which it has cited a large number of arbitral awards.

The Sublime Porte, without denying this general principle, claims to escape its application by asserting the right of states to an exceptional and privileged position in the special case of responsibility in the matter of money debts.

Elle déclare inopérants la plupart des précédents arbitraux invoqués, comme ne s'appliquant pas à cette catégorie spéciale.

Le Gouvernement Impérial Ottoman fait observer, à l'appui de sa manière de voir, qu'en doctrine, on distingue des responsabilités diverses selon leur origine et selon leur étendue. Ces nuances se rattachent surtout à la théorie des responsabilités en Droit romain et dans les législations inspirées du Droit romain. Les Mémoires Ottomans rappellent les distinctions suivantes dont quelques-unes sont classiques : Les responsabilités sont d'abord divisées en deux catégories, suivant qu'elles ont pour cause un délit ou quasi-délit (responsabilité délictuelle) ou un contrat (responsabilité contractuelle). — Parmi les responsabilités contractuelles, on distingue encore suivant qu'il s'agit d'obligations ayant pour objet une prestation quelconque autre qu'une somme d'argent ou suivant qu'il s'agit de prestations d'un caractère exclusivement pécuniaire, d'une dette d'argent proprement dite. Ces diverses catégories de responsabilités ne sont pas appréciées en droit civil d'une manière absolument identique, les circonstances nécessaires à la naissance de la responsabilité ainsi que ses conséquences étant variables. — Tandis qu'en matière de responsabilités délictuelles aucune formalité quelconque n'est nécessaire, en matière contractuelle il faut toujours une mise en demeure. Tandis qu'en matière d'obligations ayant pour objet une prestation autre qu'une somme d'argent comme d'ailleurs en matière délictuelle, la réparation du dommage est complète (*lucrum cessans* et *damnum emergens*), cette réparation, en matière de dettes d'argent, est restreinte forfaitairement aux intérêts de la somme due, lesquels ne courent qu'à partir de la mise en demeure. Les *dommages-intérêts* sont appelés *compensatoires* quand ils sont la compensation du dommage résultant d'un délit ou de l'inexécution d'une obligation. Ils sont appelés *dommages-intérêts moratoires*, bien qu'ils représentent encore une compensation, lorsqu'ils sont la conséquence d'un retard dans l'exécution d'une obligation. — Les auteurs enfin appellent *intérêts moratoires* les intérêts forfaitairement alloués en cas de retard dans le paiement de dettes d'argent, les distinguant ainsi d'autres intérêts ajoutés, parfois, pour fixer le montant total d'une indemnité, à l'évaluation en argent d'un dommage, ces derniers étant appelés *intérêts compensatoires*.

It declares not in point the majority of the arbitral precedents cited, as they do not apply to this special category.

The Imperial Ottoman Government observes, in support of its point of view, that in theory there is a distinction between various responsibilities, according to their origin and according to their extent. These differences are connected especially with the theory of responsibilities in the Roman law and in systems of law inspired by the Roman law. The Ottoman Case calls up the following distinctions, some of which are classic: Responsibilities are, in the first place, divided into two categories, according as they arise from delict or from a quasi-delict (*responsabilité délictuelle*), or from a contract (*responsabilité contractuelle*). Among contractual responsibilities there is a further distinction, according as it is a question of obligations concerning a prestation of some kind other than a sum of money, or according as it is a question of prestations of a purely pecuniary nature, of a money debt properly so called. These different categories of responsibilities are not considered in civil law in a manner absolutely the same, the circumstances necessary to give rise to the responsibility as well as its consequences being variable. While in the matter of responsibilities for delicts no formality whatever is necessary, in the matter of contractual responsibilities a demand in due form is always essential. While in the matter of obligations regarding a prestation other than a sum of money, as besides in the matter of delicts, the reparation for the damage is complete (*lucrum cessans* and *damnum emergens*), this reparation, in the matter of money debts, is restricted legally to interest on the sum due, which interest runs only from the demand in due form. The *interest-damages* are called *compensatory*, when they are compensation for damage resulting from delict or from the non-fulfilment of an obligation. They are called *moratory interest-damages* though they still represent compensation, when they are the consequence of delay in the fulfilment of an obligation. Finally, writers call *moratory interest* interest legally allowed in case of delay in the payment of money debts, thus distinguishing this from other interest added, sometimes to fix the total amount of an indemnity, to the money valuation of damages, this last being called *compensatory interest*.

Ces distinctions du droit civil s'expliquent : En matière de responsabilité contractuelle en effet, on est en droit d'exiger d'un co-contractant une diligence dont la victime d'un délit imprévu ne saurait être tenue. — En matière de dettes d'argent, la difficulté d'évaluer les conséquences de la demeure explique qu'on ait fixé forfaitairement le montant du dommage.

La thèse du Gouvernement Impérial Ottoman consiste à soutenir qu'en droit international public, la responsabilité spéciale consistant au paiement d'intérêts moratoires en cas de retard dans le règlement d'une dette d'argent liquide n'existe pas pour un Etat débiteur. La Sublime-Porte ne conteste pas la responsabilité des Etats s'il s'agit de dommages-intérêts compensatoires, ni des intérêts pouvant rentrer dans le calcul de ces dommages-intérêts compensatoires. La responsabilité que la Sublime-Porte décline, c'est celle pouvant résulter, sous forme d'intérêts de retard ou moratoires au sens restreint, du retard dans l'exécution d'une obligation pécuniaire.

Il importe de rechercher si ces dénominations variées, ces appellations créées par les commentateurs, correspondent à des différences intrinsèques dans la nature même du droit, à des différences dans l'essence juridique de la notion de responsabilité. — Le tribunal est d'avis que tous les dommages-intérêts sont toujours la réparation, la compensation d'une faute. A ce point de vue, tous les dommages-intérêts sont compensatoires, peu importe le nom qu'on leur donne. Les intérêts forfaitaires alloués au créancier d'une somme d'argent à partir de la mise en demeure sont la compensation forfaitaire de la faute du débiteur en retard exactement comme les dommages-intérêts ou les intérêts alloués en cas de délit, de quasi-délit ou d'inexécution d'une obligation de faire, sont la compensation du préjudice subi par le créancier, la représentation en argent de la responsabilité du débiteur fautif. — Exagérer les conséquences des distinctions faites en droit civil dans la responsabilité se légitimerait d'autant moins qu'il se dessine, dans plusieurs législations récentes, une tendance à atténuer ou à supprimer les adoucissements apportés par le Droit romain et ses dérivés à la responsabilité en matière de dettes d'argent. — Il est certain en effet que toutes les fautes, quelle qu'en soit l'origine, finissent par être évaluées en argent et transformées en obligation de payer ; elles aboutissent toutes, ou peuvent

These distinctions in civil law explain themselves: In the matter of contractual responsibility in effect, one is right in requiring of the other contracting party a promptness to which the victim of an unforeseen delict could not be held. In the matter of money debts, the difficulty of estimating the consequences of the demand explains why the amount of the damages has been fixed legally.

The case of the Imperial Ottoman Government consists in maintaining that in public international law, special responsibility, consisting in the payment of moratory interest in case of delay in the settlement of a debt in ready money, does not exist for a debtor state. The Sublime Porte does not deny the responsibility of states if it is a question of compensatory interest-damages, or of interest that might enter into the calculation of these compensatory interest-damages. The responsibility which the Sublime Porte repudiates is that which may result, in the form of interest for delay or moratory interest in the strict sense, from delay in the fulfilment of a pecuniary obligation.

It is important to find out whether these various terms, these appellations invented by the commentators, correspond to intrinsic differences in the very nature of law, to differences essentially juridical in the conception of responsibility. — The tribunal is of the opinion that interest-damages are always reparation, compensation for default. From this point of view all interest-damages are compensatory, no matter what name they may be given. Legal interest allowed a creditor for a sum of money from the date of the demand for payment is the legal compensation for the default of a debtor in arrears exactly as interest-damages or interest allowed in case of delict, of a quasi-delict or the non-fulfilment of an obligation are compensation for the injury suffered by the creditor, the money value of the responsibility of the delinquent debtor. — To exaggerate the consequences of distinctions made in civil-law in responsibility is the less admissible because there appears in much recent legislation a tendency to lessen or abolish the mitigation admitted by the Roman law and its derivatives as to responsibility in the matter of money debts. — It is certain, indeed, that all liability, whatever may be its origin, is finally estimated in money and transformed into obligation to pay;

aboutir, en dernière analyse, à une dette d'argent. — Il n'est donc pas possible au tribunal d'apercevoir des différences essentielles entre les diverses responsabilités. Identiques dans leur origine, la faute, elles sont les mêmes dans leurs conséquences, la réparation en argent.

Le Tribunal est donc de l'avis que le principe général de la responsabilité des Etats implique une responsabilité spéciale en matière de retard dans le paiement d'une dette d'argent, à moins d'établir l'existence d'une coutume internationale contraire.

Le Gouvernement Impérial de Russie et la Sublime-Porte ont apporté au débat une série de sentences arbitrales qui ont admis, affirmé et consacré le principe de la responsabilité des Etats. La Sublime-Porte considère comme inopérantes la presque totalité de ces sentences et élimine même celles dans lesquelles l'arbitre a expressément alloué l'intérêt de sommes d'argent. Le Gouvernement Impérial Ottoman est d'avis qu'il s'agit là d'intérêts compensatoires et il les écarte comme sans application dans le litige actuel. Le Tribunal, pour les motifs indiqués plus haut, est au contraire de l'avis qu'il n'existe pas de raisons pour ne pas s'inspirer de la grande analogie qui existe entre les diverses formes de la responsabilité; cette analogie apparaît comme particulièrement étroite entre les *intérêts* dits moratoires et les *intérêts* dits compensatoires; l'analogie paraît complète entre allocation d'intérêts à partir d'une certaine date à l'occasion de l'évaluation de la responsabilité en capital, et l'allocation d'intérêts sur un capital fixé par convention et demeuré impayé par un débiteur en faute. La seule différence est que, dans un des cas, les intérêts sont alloués par le juge puisque la dette n'était pas exigible et que dans l'autre le montant de la dette était fixé par convention et que les intérêts deviennent exigibles automatiquement en cas de mise en demeure.

Pour infirmer cette analogie très étroite, il faudrait que la Sublime-Porte pût établir l'existence d'une coutume, de précédents d'après lesquels des intérêts moratoires au sens restreint du mot auraient été refusés *en tant qu'intérêts moratoires*, l'existence d'une coutume dérogeant, en matière de dette pécuniaire, aux règles générales de la responsabilité. — Le Tribunal est d'avis que cette preuve,

it all ends, or can end, in the last analysis, in a money debt. — It is not possible for the tribunal, therefore, to perceive essential differences between various responsibilities. Identical in their origin, the default, they are the same in their consequences, reparation in money.

The tribunal is, therefore, of the opinion that the general principle of the responsibility of states implies a special responsibility in the matter of delay in the payment of a money debt, unless the existence of a contrary international custom is established.

The Imperial Russian Government and the Sublime Porte have introduced into their pleadings a series of arbitral awards, which have admitted, affirmed and sanctioned the principle of responsibility of states. The Sublime Porte considers as inapplicable nearly all of these awards, and eliminates even those in which the arbitrator has expressly allowed interest on sums of money. The Imperial Ottoman Government is of the opinion that it is there a question of compensatory interest and sets them aside as without bearing on the present litigation. The tribunal, for the reasons indicated above, is, on the contrary, of the opinion that there is no reason for disregarding the strong analogy which exists between the different forms of responsibility; this analogy appears particularly close between *interest* called moratory and *interest* called compensatory; the analogy appears complete between the allowance of interest from a certain date estimating the responsibility in money, and the allowance of interest on the principal determined by agreement and remaining unpaid by a debtor in default. The only difference is that, in one case, the interest is allowed by the judge, since the debt was not demandable, and that in the other the amount of the debt was determined by agreement and the interest becomes exigible automatically in case of due demand for payment.

To weaken this close analogy, it would be necessary for the Sublime Porte to prove the existence of a custom, of precedents in accordance with which moratory interest in the strict sense of the word has been refused *because it was moratory interest*, the existence of a custom derogatory, in the matter of a money debt, to the general principles of responsibility. — The tribunal is of the

non seulement n'a pas été faite, mais que le Gouvernement Impérial Russe a pu se prévaloir, au contraire, de plusieurs sentences arbitrales dans lesquelles des intérêts moratoires ont été, parfois il est vrai avec des nuances et dans une mesure discutables, alloués à des Etats (*Mexique-Vénézuela*, 2 octobre 1903, Mémoire Russe, p. 28 et note 5; *Contre-Mémoire Ottoman*, p. 38, N°. 107; *Colombie-Italie*, 9 avril 1904, Réplique Russe, p. 28 et note 7; *Contre-Réplique Ottomane*, p. 58, N°. 368; *Etats-Unis-Choclaws*, Réplique Russe, p. 29; *Contre-Réplique Ottomane*, p. 59, N°. 369. *Etats-Unis-Vénézuela*, 5 décembre 1885, Réplique Russe p. 28 et note 5). Il y a lieu d'ajouter à ces cas la sentence rendue le 2 juillet 1881 par S. M. l'Empereur d'Autriche dans l'affaire de la Mosquitia, en ce sens que l'arbitre n'a nullement refusé des intérêts moratoires comme tels, mais a simplement prononcé que l'allocation du capital ayant le caractère d'une libéralité, cela excluait, dans la pensée de l'arbitre, des intérêts de retard (Réplique Russe, p. 28, note 4; *Contre-Réplique Ottomane*, p. 55, N°. 365, note).

Il reste à examiner si la Sublime-Porte est fondée à soutenir qu'un Etat n'est pas un débiteur comme un autre, qu'il ne peut être „débiteur dans une mesure plus forte qu'il ne l'aurait voulu,” et qu'en lui imposant des obligations qu'il n'a pas stipulées, par exemple les responsabilités d'un débiteur privé, on risquerait de compromettre ses finances et même son existence politique.

Dès l'instant où le Tribunal a admis que les diverses responsabilités des Etats ne se distinguent pas les unes des autres par des différences essentielles, que toutes se résolvent ou peuvent finir pas se résoudre dans le paiement d'une somme d'argent, et que la coutume internationale et les précédents concordent avec ces principes, il faut en conclure que la responsabilité des Etats ne saurait être niée ou admise qu'entièrement et non pour partie; il ne serait dès lors pas possible au tribunal de la déclarer inapplicable en matière de dettes d'argent sans étendre cette inapplicabilité à toutes les autres catégories de responsabilités.

Si un Etat est condamné à des dommages-intérêts compensatoires d'un délit ou de l'inexécution d'une obligation, il est, encore plus que dans le cas de retard dans le paiement d'une dette d'argent

opinion that such proof not only has not been offered, but that the Imperial Russian Government has been able to strengthen its case on the contrary, by several arbitral awards in which moratory interest has been allowed to states, in some cases, it is true, with shades of difference, and to a certain extent debatable (*Mexico-Venezuela*, October 2, 1903, Russian Case, p. 28 and note 5; Ottoman Counter-Case, p. 38, No. 107; *Colombia-Italy*, April 9, 1904, Russian Reply, p. 28 and note 7; Ottoman Counter-Reply, p. 58, No. 368; *United States-Choclarws*, Russian Reply, p. 29; Ottoman Counter-Reply, p. 59, No. 369; *United States-Venezuela*, December 5, 1885, Russian Reply, p. 28 and note 5). There should be added to these cases the award rendered on July 2, 1881, by His Majesty the Emperor of Austria in the Mosquito affair, in the sense that the arbitrator did not at all refuse moratory interest as such, but simply declared that the allowance of the principal being in the nature of a donation, this, in the judgment of the arbitrator, excluded interest for deferred payment (Russian Reply, p. 28, note 4; Ottoman Counter-Reply, p. 55, No. 365, note).

It remains to examine whether the Sublime Porte has ground for maintaining that a state is not a debtor as an other, that it cannot be a "debtor to a greater degree than it may have wished," and that to impose upon it obligations which it has not stipulated, for example the responsibilities of a private debtor, would risk compromising its finances and even its political existence.

When the tribunal has admitted that the various responsibilities of states are not distinguished from each other by essential differences, that all resolve themselves or finally may be resolved into the payment of a sum of money, and that international custom and precedents accord with these principles, it must be concluded that the responsibility of states can be denied or admitted only in its entirety and not in part; it would not then be possible for the tribunal to declare this inapplicable in the matter of money debts without extending this inapplicability to all the other categories of responsibilities.

If a state is condemned to compensatory interest damages because of a delict or for the non-fulfilment of an obligation, it is even more still, in case of delay in the payment of a conventional money

conventionnelle, débiteur dans une mesure qu'il n'aurait pas stipulée volontairement. — Quant aux conséquences de ces responsabilités pour les finances de l'Etat débiteur, elles peuvent être au moins aussi graves, sinon davantage, s'il s'agit des dommages-intérêts appelés compensatoires par la Sublime-Porte, que s'il s'agit des simples intérêts moratoires au sens restreint du mot. Pour peu d'ailleurs que la responsabilité mette en péril l'existence de l'Etat, elle constituerait un cas de force majeure qui pourrait être invoqué en droit international public aussi bien que par un débiteur privé.

Le Tribunal est donc d'avis que la Sublime-Porte, qui a accepté explicitement le principe de la responsabilité des Etats, n'est pas fondée à demander une exception à cette responsabilité en matière de dettes d'argent, en invoquant sa qualité de Puissance publique et les conséquences politiques et financières de cette responsabilité.

5. Pour établir en quoi consiste cette responsabilité spéciale incombant à l'Etat débiteur d'une dette conventionnelle liquide et exigible, il convient maintenant de rechercher, en procédant par analogie comme l'ont fait les sentences arbitrales invoquées, les principes généraux de droit public et privé en cette matière, tant au point de vue de l'étendue de cette responsabilité qu'à celui des exceptions opposables.

Les législations privées des Etats faisant partie du concert européen admettent toutes, comme le faisait autrefois le Droit romain, l'obligation de payer au moins des intérêts de retard à titre d'indemnité forfaitaire lorsqu'il s'agit de l'inexécution d'une obligation consistant dans le paiement d'une somme d'argent fixée conventionnellement, liquide et exigible, et cela au moins à partir de la mise en demeure du débiteur. — Quelques législations vont plus loin et considèrent que le débiteur est déjà en demeure dès la date de l'échéance ou encore admettent la réparation complète des dommages au lieu des simples intérêts forfaitaires.

Si la plupart des législations ont, à l'exemple du Droit romain, exigé une mise en demeure expresse, c'est que le créancier est en faute de son côté par manque de diligence tant qu'il ne réclame pas le paiement d'une somme liquide et exigible.

Le Gouvernement Impérial Russe (Mémoire, p. 32) admet lui-même, en faveur de la nécessité d'une mise en demeure, qu'en

debt, a debtor to a degree which it may not have voluntarily stipulated. — As to the consequences of these responsibilities upon the finances of a debtor state, they might at least be just as serious, if not more so, if it were a question of interest damages called compensatory by the Sublime Porte, as when it is a question of simple moratory interest in the strict sense of the word. Moreover, however little the responsibility places in peril the existence of the state, it would constitute a case of *force majeure* which could be pleaded in public international law as well as by a private debtor.

The tribunal is, therefore, of the opinion that the Sublime Porte, which has explicitly accepted the principle of the responsibility of states, has no ground for demanding an exception to this responsibility in the matter of money debts by pleading its character of public Power and the political and financial consequences of this responsibility.

5. To determine in what this special responsibility, resting upon a state owing a conventional debt due and demandable, consists, it is now expedient to examine, proceeding by analogy as was done in the arbitral awards cited, the general principles of public and private law in this matter, as much from the point of view of the extent of this responsibility as of the exceptions which may be opposed.

The private legislation of the states forming the European concert alike admits, as did formerly the Roman law, the obligation to pay at least interest for delayed payments on the ground of legal indemnity when it is a question of the non-fulfilment of an obligation consisting in the payment of a sum of money fixed by convention, due and demandable, and that at least from the date of the demand made upon the debtor. Some legislation goes farther and considers that the debtor is already in default from the date of maturity, or even allows complete reparation for damages instead of simple legal interest.

If most legislation has, according to the example of the Roman Law, required an express demand for payment, it is because the creditor is at fault on his part for lack of diligence inasmuch as he does not demand payment of a sum due and exigible.

The Imperial Russian Government (Case, p. 32) itself allows, in favor of the necessity of a demand for payment, that, in equity, it

équité, il peut convenir „de ne pas prendre par surprise un Etat „débiteur passible d'intérêts moratoires, alors qu'aucun avertissement ne l'a rappelé à l'observation de ses engagements." Les auteurs (p. ex. Heffter, *Droit international de l'Europe*, paragr. 94), font observer que, lors de „l'exécution d'un traité public, il faut „procéder avec modération et avec équité, d'après la maxime „qu'on doit traiter les autres comme on voudrait être traité soi-même. Il faut, en conséquence, accorder des délais convenables, „afin que la partie obligée subisse le moins de préjudice possible. „L'obligé peut attendre la mise en demeure du créancier avant „d'être responsable du retard, s'il ne s'agit pas de prestations „dont l'exécution est rattachée d'une manière expresse à une époque „déterminée." Voir aussi Merignhac *Traité de l'arbitrage international*, Paris 1895, p. 290.

D'assez nombreuses sentences arbitrales internationales ont admis, même lorsqu'il s'agissait de *dommages-intérêts* moratoires, qu'il n'y avait pas lieu de les faire courir toujours dès la date du fait dommageable (*Etats-Unis contre Vénézuëla*, Orinoco, sentence de la Haye du 25 octobre 1910 protocoles p. 59, *Etats-Unis contre Chili*, 15 mai 1863 sentence de S. M. le Roi des Belges Léopold I, Lafontaine, Pasicrisie p. 36 colonne 2 et p. 37 colonne 1, *Allemagne contre Vénézuëla*, Arrangement du 7 mai 1903, Ralston & Doyle, Venezuelan Arbitrations, Washington 1904 p. 520 à 523, *Etats-Unis contre Vénézuëla* 5 décembre 1885, Moore, Digest of International Arbitrations p. 3545 et p. 3567 Vol. 4, etc. etc.).

Il n'y a donc pas lieu, et il serait contraire à l'équité de présumer une responsabilité de l'Etat débiteur plus rigoureuse que celle imposée au débiteur privé dans un grand nombre de législations européennes. L'équité exige, comme l'indique la doctrine, et comme le Gouvernement Impérial Russe l'admet lui-même, qu'il y ait eu avertissement, mise en demeure adressée au débiteur d'une somme ne portant pas d'intérêts. Les mêmes motifs réclament que la mise en demeure mentionne expressément les intérêts, et concourent à faire écarter une responsabilité dépassant les simples intérêts forfaitaires.

Il résulte de la correspondance produite que le Gouvernement Impérial Russe a expressément et en termes absolument catégoriques, réclaté de la Sublime-Porte le paiement du capital et „des

may be advisable "not to take by surprise a debtor state liable to moratory interest, since no notice had reminded it to observe its engagements." Writers (for example, Heffter, *Droit International de l'Europe*, paragraph 94) say that, in "the execution of a public treaty, it is necessary to proceed with moderation and equity, according to the maxim that we must treat others as we wish to be treated ourselves. It is necessary, therefore, to grant reasonable extensions, so that the obligated party may suffer the least possible injury. The obligated party may await the creditor's demand for payment before becoming responsible for delay, provided it is not a question of prestations of which the performance is stipulated in a definite manner for a fixed time." See also Merignhac, *Traité de l'arbitrage international*, Paris, 1895, p. 290.

A considerable number of international arbitral awards have admitted that, even when it is a question of moratory *interest-damages* for deferred payments, there is no occasion to have it always run from the date of the damageable fact (*United States v. Venezuela, Orinoco*, Hague award of October 25, 1910, protocols, p. 59; *United States v. Chile*, May 15, 1863, award of His Majesty the King of the Belgians Leopold I, Lafontaine, *Pasicrisie*, p. 36, column 2 and page 37, column 1; *Germany v. Venezuela*, Arrangement of May 7, 1903, Ralston & Doyle, *Venezuelan Arbitrations*, Washington, 1904, pp. 520 to 523; *United States v. Venezuela*, December 5, 1885, Moore, *Digest of International Arbitrations*, p. 3545 and p. 3567, Vol. 4, etc.).

There is then no reason, and it would be contrary to equity, to presume a responsibility of a debtor state more burdensome than that imposed upon a private debtor in the great body of European legislation. Equity requires, as the doctrine indicates and as the Imperial Russian Government itself admits, that there shall be notice, demand in due form addressed to the debtor, for a sum which does not bear interest. The same reasons require that the demand for payment shall mention expressly the interest, and concur to remove responsibility beyond the simple legal interest.

It appears from the correspondence submitted, that the Imperial Russian Government has expressly and in absolutely categorical terms demanded payment from the Sublime Porte of the principal

„intérêts” par note de son ambassade à Constantinople en date du 31 décembre 1890/12 janvier 1891. Entre Etats, la voie diplomatique constitue le mode de communication normal et régulier pour leurs relations de droit international public; cette mise en demeure est donc régulière en la forme.

Le Gouvernement Impérial Ottoman doit donc être tenu pour responsable des intérêts de retard à partir de la réception de cette mise en demeure.

Le Gouvernement Impérial Ottoman invoque, pour le cas où une responsabilité lui serait imposée, diverses *exceptions* dont il reste à examiner la portée :

6. *L'exception de la force majeure*, invoquée en première ligne, est opposable en droit international public aussi bien qu'en droit privé; le droit international doit s'adapter aux nécessités politiques. Le Gouvernement Impérial Russe admet expressément (Réplique Russe, p. 33 et note 2) que l'obligation pour un Etat d'exécuter les traités peut fléchir „si l'existence même de l'Etat vient à être en danger, si „l'observation du devoir international est . . . „self destructive.”

Il est incontestable que la Sublime-Porte prouve, à l'appui de l'exception de la force majeure (Contre-Mémoire Ottoman, p. 43, Nos. 119 à 128, Contre-Réplique Ottomane, p. 64, Nos. 382 à 398 et p. 87) que la Turquie s'est trouvée de 1881 à 1902 aux prises avec des difficultés financières de la plus extrême gravité, cumulées avec des événements intérieurs et extérieurs (insurrections, guerres) qui l'ont obligée à donner des affectations spéciales à un grand nombre de ses revenus, à subir un contrôle étranger d'une partie de ses finances, à accorder même un moratoire à la Banque Ottomane, et, en général, à ne pouvoir faire face à ses engagements qu'avec des retards ou des lacunes et cela au prix de grands sacrifices. Mais il est avéré, d'autre part, que, pendant cette même période et notamment à la suite de la création de la Banque Ottomane, la Turquie a pu contracter des emprunts à des taux favorables, en convertir d'autres, et finalement amortir une partie importante, évaluée à 350 millions de francs, de sa dette publique (Réplique Russe, p. 37). Il serait manifestement exagéré d'admettre que le paiement (ou la conclusion d'un emprunt pour le paiement) de la somme relativement minime d'environ six millions de francs du aux indemnitaires

and "of the interest," by a note of its embassy at Constantinople, dated December 31, 1890/January 12, 1891. Between states, diplomatic channels constitute the normal and regular means of communication for their relations in public international law; this demand for payment is, therefore, regular and in due form.

The Imperial Ottoman Government must, then, be held responsible for the interest for delayed payments from the date of the receipt of this demand for payment.

The Imperial Ottoman Government pleads, in case responsibility is imposed upon it, various *exceptions*, the bearing of which remains to be examined :

6. *The exception of force majeure*, cited as of the first importance, may be maintained in public as well as in private international law ; international law must adapt itself to political necessities. The Imperial Russian Government expressly admits (Russian Reply, p. 33 and note 2) that the obligation of a state to fulfill treaties may give way "if the very existence of the state should be in danger, if the observance of the international duty is . . . 'self-destructive.'"

It is unquestionable that the Sublime Porte proves, by means of the exception of *force majeure* (Ottoman Counter-Reply, p. 43, Nos. 119 to 128, Ottoman Counter-Reply, p. 64, Nos. 382 to 398 and p. 87) that Turkey was, from 1881 to 1902, struggling with financial difficulties of the extreme seriousness, increased by domestic and foreign events (insurrections, wars) which forced it to make special disposition of a large part of its revenues, to submit to foreign control of a part of its finances, to grant even a delay in payment to the Ottoman Bank, and, generally, it could satisfy its engagements only through delay and postponements, and even then at the cost of great sacrifice. But it is admitted, on the other hand, that during this same period and especially following the establishment of the Ottoman Bank, Turkey was able to obtain some loans at favorable rates, to redeem others, and, finally, to pay off a large part of its public debt, estimated at 350,000,000 francs (Russian Reply, p. 37). It would clearly be exaggeration to grant that the payment (or the securing of a loan for the payment) of the sum, relatively small, of about six million francs due the Russian

russes aurait mis en péril l'existence de l'Empire Ottoman ou gravement compromis sa situation intérieure ou extérieure. *L'exception de la force majeure ne saurait donc être accueillie.*

7. La Sublime-Porte soutient ensuite „que la reconnaissance d'une „créance de capital au profit des indemnitaires russes constituait „une *libéralité* convenue dans leur intérêt entre les deux Gouvernements” (Contre-Réplique, No. 153, p. 19; No. 331, p. 44; No. 365, p. 55, et conclusions, p. 87) — Elle fait observer que le Code civil allemand, paragraphe 522, le Droit commun germanique, la jurisprudence autrichienne et le Droit romain invoqué à titre supplétoire (Loi 16 praemium, Digeste 22, 1) interdisent de frapper d'intérêts moratoires la donation. — Elle invoque surtout la sentence arbitrale rendue le 2 juillet 1881 par S. M. l'Empereur d'Autriche dans l'affaire de la Mosquitia entre la Grande-Bretagne et le Nicaragua.

Dans cette affaire, la Grande-Bretagne avait renoncé, par un traité de 1860, au protectorat sur la Mosquitia et à la ville de Grey Town (San Juan del Norte) et reconnu sur la Mosquitia la souveraineté du Nicaragua en stipulant que cette République payerait pendant dix ans au chef des Mosquitos, pour lui faciliter l'établissement du self-government dans ses territoires, une rente de 5000 dollars qui ne tarda pas à demeurer impayée. Le chef des Mosquitos bénéficiait donc, dans la pensée de l'arbitre, d'une véritable libéralité, réclamée en sa faveur du Nicaragua par la Grande-Bretagne, qui, elle, avait fait des sacrifices politiques en renonçant à son protectorat et au port de Grey Town. — Dans l'opinion du Tribunal, les indemnitaires russes, eux, ont subi des dommages, ont été victimes de faits de guerre; la Turquie s'est engagée à rembourser le montant de ces dommages à toutes les victimes russes qui auraient fait évaluer leur préjudice par la commission instituée auprès de l'ambassade de Russie à Constantinople. Les décisions de cette commission n'ont pas été contestées et le Tribunal arbitral n'a pas à les reviser ni à apprécier si elles ont ou non été trop généreuses. Si l'indemnisation par la Turquie des Russes victimes des opérations de guerre n'était pas obligatoire en droit des gens commun, elle n'a rien de contraire à celui-ci et peut être considérée comme la transformation en obligation juridique d'un devoir moral par un traité de paix dans des conditions analogues à une indemnité de

claimants would imperil the existence of the Ottoman Empire or seriously compromise its internal or external situation. *The exception of force majeure cannot, therefore, be admitted.*

7. The Sublime Porte maintains next "that the acknowledgement of a debt bearing interest to the Russian indemnitees constituted a donation agreed upon for their benefit between the two governments" (Counter-Reply, No. 253, p. 19; No. 331, p. 44; No. 365, p. 55, and conclusions, p. 87). It remarks that the German civil code, paragraph 522, the Germanic common law, Austrian jurisprudence and the Roman law, cited on suppletory grounds (Law 16 præmium, *Digest* 22, 1) forbid the imposition of moratory interest upon a donation. It cites, especially, the arbitral award rendered July 2, 1881, by His Majesty the Emperor of Austria in the Mosquito affair between Great Britain and Nicaragua.

In this affair Great Britain had renounced by a treaty of 1860 its protectorate over the Mosquito territory and the city of Greytown (San Juan del Norte) and had recognized the sovereignty of Nicaragua in the Mosquito territory, stipulating that this republic should pay for ten years to the chief of the Mosquito Indians, to facilitate the establishment of self-government in his territories, an annual sum of 5,000 dollars, which soon ceased to be paid. In the opinion of the arbitrator, the chief of the Mosquitians was benefiting by a veritable gift, claimed in his behalf from Nicaragua by Great Britain, which had made political sacrifices in giving up its protectorate and the port of Greytown. — In the opinion of the tribunal, the Russian claimants themselves suffered damages, were victims of acts of war; Turkey bound itself to make good the amount of these damages to all the Russian victims who should establish their injury through the commission set up at the Russian Embassy at Constantinople. The decisions of this commission were not contested and the arbitral tribunal has neither to revise them nor to determine whether or not they were too liberal. If the indemnification by Turkey of the Russian victims of war operations was not obligatory in the common law of nations, it is in nowise contrary to it and may be considered as the transformation of a moral duty into a juridical obligation by a treaty of peace, under conditions analogous to a war indemnity

guerre proprement dite. — Dans toute la correspondance diplomatique échangée depuis trente ans sur cette affaire, les Russes victimes des opérations de guerre ont toujours été considérés par les deux parties signataires des accords de 1878/1879 comme des indemnitaires et non comme des donataires. Enfin, la Turquie a reçu la contrepartie de sa prétendue libéralité dans le fait de la cessation des hostilités (Réplique Russe, p. 50, paragr. 2). *Il n'est donc pas possible d'admettre l'existence d'une libéralité* et encore moins une donation, et il devient, par suite, superflu de rechercher si, en droit international public, les donateurs doivent bénéficier de l'exemption d'intérêts moratoires établie à leur profit par certaines législations privées.

8. La Sublime-Porte invoque *l'exception de la chose jugée*, en s'appuyant sur le fait que trois indemnitaires ont demandé à la commission instituée auprès de l'ambassade de Russie à Constantinople des intérêts jusqu' à parfait payement, que la commission a écarté leur requête et que cette solution négative serait encore plus certainement intervenue à l'égard des autres indemnitaires qui n'ont pas réclamé de semblables intérêts. (Contre-Réplique Ottomane, p. 86.)

Cette exception ne saurait être accueillie parce que, même en admettant que la commission de Constantinople puisse être considérée comme un tribunal, la question actuellement pendante est celle de savoir si des dommages-intérêts sont dus, *a posteriori* à raison des dates auxquelles ont été payées les indemnités évaluées en 1879/81 par la Commission; or celle-ci n'a pas jugé et n'a pu juger cette question.

9. La Sublime-Porte invoque, comme dernière exception, le fait „qu'il a été entendu, tacitement et même expressément, pendant „tout le cours des onze ou douze dernières années de correspondances „diplomatiques, que la Russie ne réclamait pas d'intérêts ni de „dommages-intérêts d'aucune sorte qui auraient été à la charge de „l'Empire Ottoman” et „que le Gouvernement Impérial de Russie, „une fois le capital intégralement mis à sa disposition, ne pouvait „pas valablement revenir d'une façon unilatérale sur l'entente con- „venue de sa part” (Contre-Réplique Ottomane, pp. 89-91).

Le Gouvernement Impérial Ottoman fait observer avec raison

properly so called. In all the diplomatic correspondence exchanged for thirty years upon this affair, the Russian victims of war operations have always been considered by the two parties signatory to the agreements of 1878-1879 as indemnitees and not as donees. Finally, Turkey has obtained value for its pretended liberality by the fact of the cessation of hostilities (Russian Reply, p. 50, paragraph 2). *It is, therefore, not possible to admit the existence of liberality*, and still less of a donation, and it becomes consequently superfluous to inquire whether in public international law donors should benefit by exemption from moratory interest, established for their profit by certain private legislation.

8. The Sublime Porte pleads the *exception of res judicata*, supporting itself upon the fact that three indemnitees have asked the commission set up at the Russian Embassy at Constantinople for interest till complete payment, that the commission set aside their request, and that this negative action would still more certainly have intervened as regards other claimants who have not demanded such interest. (Ottoman Counter-Reply, p. 86.)

This exception cannot be admitted because, even granting that the Constantinople commission may be considered as a tribunal, the question now pending is this, namely, whether interest damages are due, *a posteriori*, by reason of the dates on which the indemnities fixed from 1878-81 by the commission were paid; that commission did not decide and could not have decided this question.

9. The Sublime Porte pleads, as a last exception, the fact "that it was understood, tacitly and even expressly, during all the course of the eleven or twelve last years of diplomatic correspondence, that Russia did not claim interest or interest-damages of any kind which would have been an obligation upon the Ottoman Empire," and "that the Imperial Russian Government, once the entire principal was placed at its disposal, could not validly alter in a one-sided manner the understanding agreed to on its part." (Ottoman Counter-Reply, pp. 89-91.)

The Imperial Ottoman Government remarks, justly, that if Russia

que si la Russie a fait parvenir à Constantinople, par la voie diplomatique, le 31 décembre 1890/12 janvier 1891, une mise en demeure régulière d'avoir à payer le capital et les intérêts, il résulte, d'autre part, de la correspondance *subséquente*, qu'à l'occasion du paiement des acomptes, aucune réserve d'intérêts n'a figuré dans les reçus délivrés par l'ambassade, et que celle-ci n'a jamais imputé les sommes reçues sur les intérêts. Il en résulte aussi que les Parties ont non seulement ébauché des combinaisons pour arriver au paiement, mais se sont abstenues de faire mention des intérêts pendant dix ans environ. Il en résulte surtout que les deux Gouvernements ont interprété de façon identique le terme de *reliquat* de l'indemnité; que ce terme, employé pour la première fois par le Ministère Ottoman des Affaires Etrangères dans une communication du 27 mars 1893, revient fréquemment dans la suite; que les deux Gouvernements ont visé constamment par le mot *reliquat* les fractions du capital restant dû à la date des notes échangées, ce qui laisse de côté les intérêts moratoires; que l'ambassadeur de Russie à Constantinople a écrit le 23 mai/4 juin 1894: „Je suis „obligé d'insister pour que la *totalité du reliquat* dû aux sujets russes, „*qui monte à 91,000 livres turques*, soit, sans plus de retard, versé à „l'ambassade, afin de faire droit aux justes plaintes et réclamations „des intéressés. . . . et mettre ainsi réellement, selon l'expression „de Votre Excellence, fin aux incidents auxquels elle avait donné „lieu”; que cette somme de 91,000 livres turques était exactement celle qui demeurerait alors due sur le capital et qu'ainsi les intérêts moratoires ont été laissés de côté; — que le 3 octobre de la même année 1894, la Turquie, sur le point de payer un acompte de 50,000 livres, a annoncé à l'ambassade, sans rencontrer d'objections, que la Banque Ottomane „garantira le paiement du *reliquat de 41,000 „livres turques*”; — que le 13/25 janvier 1896, l'ambassade a repris le même terme de reliquat de l'indemnité tout en protestant contre l'affectation par la Turquie à la Banque Ottomane, de délégations sur des revenus déjà engagés au Gouvernement Impérial Russe pour le paiement de l'indemnité de guerre; — que, le 11 février de cette même année 1896, à l'occasion de la discussion des ressources à fournir à la Banque Ottomane, la Sublime-Porte a mentionné, dans une note adressée à l'ambassade, „les 43,978 livres turques repré-

sent to Constantinople, through diplomatic channels, on December 31, 1890/January 12, 1891, a regular demand for payment of the principal and interest, it follows, on the other hand, from the *subsequent* correspondence, that on the occasion of the payments on account, no reservation as to interest appeared in the receipts given by the embassy, and that the embassy never reckoned the sums received as interest. It also follows that the parties not only outlined plans to bring about payment, but abstained from making mention of interest for about ten years. It follows, above all, that the two governments interpreted in like manner the term *balance* of the indemnity; that this term, used for the first time by the Ottoman Ministry of Foreign Affairs in a communication of March 27, 1893, frequently recurs thereafter; that the two governments have constantly meant by the word *balance* the portion of the principal remaining due at the date of the exchange of notes which disregards moratory interest; that the Russian Ambassador at Constantinople wrote on May 23/June 4, 1894: "I am obliged to insist that the *total of the balance* due Russian subjects, *which amounts to 91,000 Turkish pounds*, be, without further delay, turned over to the embassy, in order to furnish satisfaction to the just complaints and claims of those interested . . . and thus really to put according to Your Excellency's expression an end to the incidents to which it had given rise"; that this sum of 91,000 Turkish pounds was exactly that which then remained due on the principal and that thus moratory interest was disregarded; that on October 3rd of the same year, 1894, Turkey, on the point of paying on account 50,000 pounds, announced to the embassy, without meeting with any objections, that the Ottoman Bank "will guarantee the payment of the *balance of 41,000 Turkish pounds*"; that on January 13/25, 1896, the embassy again employed the same term, balance of the idemnity, in protesting against the making over by Turkey to the Ottoman Bank of assignments of revenues already pledged to the Imperial Russian Government for the payment of the war indemnity;— that on February 11th of the same year, 1896, on the occasion of the discussion of the resources to be furnished to the Ottoman Bank, the Sublime Porte mentioned, in a note addressed to the embassy,

„sentant le *reliquat de l'indemnité*”; — que, quelques jours plus tard, le 10/22 février, l'ambassade a répondu en se servant des mêmes mots „solde” ou „*reliquat de l'indemnité*” à plusieurs reprises, et, que le 28 mai, le Ministère Ottoman des Affaires Étrangères a mentionné derechef, „la somme de 43,978 livres turques représentant ledit reliquat”; — qu'il en a été de même dans une note de l'ambassade datée du 25 avril/8 mai 1900, bien qu'il se fut écoulé près de quatre ans entre ces communications et celles de 1896 et qu'un rappel de la question des intérêts s'imposât en quelque sorte après un aussi long délai; que cette même expression „reliquat de l'indemnité” figure dans une note de la Sublime-Porte du 5 juillet 1900; — qu'enfin, le 3/16 mars 1901, l'Ambassade de Russie, après avoir constaté que la Banque Ottomane n'a pas fait de nouveaux versements „pour le payement des 43,978 livres turques, montant du *reliquat de l'indemnité* due aux sujets russes,” a demandé l'envoi à qui de droit d'ordres „catégoriques pour le payement sans plus de retard „des sommes susmentionnées”; — que ce reliquat ayant, à un petit solde près, été tenu par la Banque Ottomane à la disposition de l'ambassade, c'est seulement au bout de plusieurs mois, le 23 juin/6 juillet, que cette dernière a transmis à la Sublime-Porte une demande „des intéressés” concluant au payement d'une vingtaine de millions de francs pour intérêts de retard, en exprimant l'espoir que la Sublime-Porte „n'hésitera pas à „reconnaître, en principe, le bien fondé de la réclamation,” sauf „à déférer l'examen des détails à une commission” mixte russo-turque; — qu'en résumé, depuis onze ans et davantage, et jusqu'à une date postérieure au payement du reliquat du capital, il n'avait non seulement plus été question d'intérêts entre les deux Gouvernements mais été à maintes reprises fait mention seulement du reliquat du capital.

Dès l'instant où le Tribunal a reconnu que, d'après les principes généraux et la coutume en droit international public, il y avait similitude des situations entre un Etat et un particulier débiteurs d'une somme conventionnelle liquide et exigible, il est équitable et juridique d'appliquer aussi par analogie les règles de droit privé commun aux cas où la demeure doit être considérée comme purgée

"the 43,978 Turkish pounds, representing *the balance of the indemnity*"; — that some days later, February 10/22, the embassy replied, making use of the same words *pay* or *balance of the indemnity* repeatedly; and that on May 28th the Ottoman Ministry of Foreign Affairs mentioned again "the sum of 43,978 Turkish pounds representing the said balance"; — that it was the same in a note of the embassy dated April 25/May 8, 1900, although about four years had passed between these communications and those of 1896, and that a reminder of the question of interest should have been conveyed in some way after so long an interval; that this same expression, balance of the indemnity, appears in a note of the Sublime Porte of July 5, 1900; — that, finally, on March 3/16, 1901, the Russian Embassy, after having ascertained that the Ottoman Bank had not made further deposits "for the payment of the 43,978 Turkish pounds, the amount of the *balance of the indemnity* due to Russian subjects," requested the dispatch to the proper person of unequivocal orders "for the payment without further delay 'of the above mentioned sums'"; — that this balance, to within a small sum, having been held by the Ottoman Bank at the disposal of the embassy, it was only toward the end of several months, June 23/July 6, that the embassy transmitted to the Sublime Porte a demand of "those interested," calling for the payment of some twenty million francs for interest on account of delay, expressing the hope that the Sublime Porte "will not hesitate to recognize in principle, the just ground of the claim," except "to refer the examination of the details to a commission," mixed Russo-Turkish; — that in short, for eleven years and more, and at a date subsequent to the payment of the balance of the principal, there had been not only no longer question of interest between the two governments, but mention had oftentimes been made only of the balance of the principal.

From the time when the tribunal recognized that, according to the general principles and custom of public international law, there was a similarity in conditions between a state and an individual, debtor for a definite and demandable conventional sum, it is equitable and juridical also to apply by analogy the rules of private law common to cases where the demand for payment must be considered

et le bénéfice de celle-ci supprimée. — En droit privé, les effets de la demeure sont supprimés lorsque le créancier, après avoir constitué le débiteur en demeure, accorde un ou plusieurs délais pour satisfaire à l'obligation principale sans réserver les droits acquis par la demeure (*Toullier-Duvergier, Droit français*, tome III, p. 159, N^o. 256), ou encore lorsque „le créancier ne donne pas suite à la sommation qu'il avait faite au débiteur,” et „ces règles s'appliquent aux dommages intérêts et aussi aux intérêts dus pour l'inexécution de l'obligation . . . ou pour retard dans l'exécution” (*Duranton, Droit français*, X, p. 470, *Aubry et Rau, Droit Civil* 1871, IV, p. 99, *Berney, De la demeure* etc. Lausanne 1886, p. 62; *Windscheid, Lehrbuch des Pandektenrechts*, 1879, p. 99, *Demolombe* X, p. 49; *Larombière* I, art. 1139 n^o. 22, etc.)

Entre le Gouvernement Impérial Russe et la Sublime-Porte, il y a donc eu renonciation aux intérêts de la part de la Russie, puisque son ambassade a successivement accepté sans discussion ni réserve et reproduit à maintes reprises dans sa propre correspondance diplomatique les chiffres du reliquat de l'indemnité comme identiques aux chiffres du reliquat en capital. — En d'autres termes, la correspondance des dernières années établit que les deux Parties ont interprété, en fait, les actes de 1879 comme impliquant l'identité entre le paiement du solde du capital et le paiement du solde auquel avaient droit les indemnitaires, ce qui impliquait l'abandon des intérêts ou dommages-intérêts moratoires.

Le Gouvernement Impérial Russe ne peut, une fois le capital de l'indemnité intégralement versé ou mis à sa disposition, revenir valablement d'une façon unilatérale sur une interprétation acceptée et pratiquée en son nom par son ambassade.

III

EN CONCLUSION

Le Tribunal arbitral, se basant sur les observations de droit et de fait qui précèdent, est d'avis

qu'en principe, le Gouvernement Impérial Ottoman était tenu, vis-à-vis du Gouvernement Impérial de Russie, à des indemnités moratoires à partir du 3 décembre 1890/12 janvier 1891, date de la réception d'une mise en demeure explicite et régulière,

as cleared and the benefit therefrom eliminated. — In private law, the effects of demand for payment are eliminated when the creditor, after having placed the debtor under summons, grants one or more extensions for meeting the principal obligation, without reserving the rights acquired by the summons (Toullier-Duvergier, *Droit français*, vol. III, p. 159, No. 256), or again, when "the creditor does not pursue the summons which he has made to the debtor," and "these rules apply to interest-damages and also to interest due for the non-fulfilment of an obligation . . . or for delay in its fulfilment" (Duranton, *Droit français*, X, p. 470; Aubry and Rau, *Droit Civil*, 1871, IV, p. 99; Berney, *De la demeure*, etc., Lausanne, 1886, p. 62; Windscheid, *Lehrbuch des Pandektenrechts*, 1879, p. 99; Demolombe X, p. 49; Larombière I, art. 1139, No. 22, etc.).

Between the Imperial Russian Government and the Sublime Porte, there has been then a renunciation of interest on the part of Russia, since its embassy has again and again accepted without discussion or reservation and mentioned repeatedly in its own diplomatic correspondence the amount of the balance of the indemnity as identical with the amount of the balance of the principal. — In other words, the correspondence of recent years proves that the two parties interpreted, in fact, the acts of 1879 as implying identity between the payment of the balance of the principal and the payment of the balance to which the indemnitees had a right, this implied the renunciation of interest or moratory interest-damages.

The Imperial Russian Government cannot, once the principal of the indemnity was paid or placed at its disposal, validly reconsider in a one-sided manner an interpretation accepted and acted upon in its name by its embassy.

III

IN CONCLUSION

The arbitral tribunal, basing its conclusion upon the statements of law and of fact which precede, is of the opinion

That in principle the Imperial Ottoman Government was liable to the Imperial Russian Government for moratory indemnities from December 31, 1890/January 12, 1891, the date of the receipt of an explicit and regular demand for payment,

mais que, de fait, le bénéfice de cette mise en demeure ayant cessé pour le Gouvernement Impérial de Russie par suite de la renonciation subséquente de son ambassade à Constantinople, le Gouvernement Impérial Ottoman n'est pas tenu aujourd'hui de lui payer des dommages-intérêts à raison des dates auxquelles a été effectué le paiement des indemnités, et, en conséquence,

ARRÊTE

il est répondu négativement à la question posée au chiffre 1 de l'article 3 du Compromis et ainsi conçue : „Oui ou non, le Gouvernement „Impérial Ottoman est-il tenu de payer aux indemnitaires russes des „dommages-intérêts à raison des dates auxquelles ledit Gouvernement „a procédé au paiement des indemnités fixées en exécution de l'article „5 du traité du 27 janvier/8 février 1879, ainsi que du Protocole de „même date” ?

Fait à La Haye, dans l'hôtel de la Cour Permanente d'Arbitrage,
le 11 novembre 1912.

Le Président : LARDY

Le Secrétaire général : MICHIELS VAN VERDUYNEN

Le Secrétaire : RÖELL

But that, in fact, the benefit from this demand for payment having lapsed for the Imperial Russian Government as a result of the subsequent renunciation by its embassy at Constantinople, the Imperial Ottoman Government is not now held to pay interest-damages by reason of the dates on which the payments of the indemnities were made,

And consequently,

DECIDES

A negative reply is to be made to the Question proposed in no. 1 of Article 3 of the compromis and thus stated: "Whether or not the Imperial Ottoman Government is bound to pay to the Russian indemnitees interest-damages by reason of the dates on which the said government has proceeded to the payment of the indemnities fixed in carrying out Article 5 of the treaty of January 27/February 8, 1879, as well as of the protocol of the same date?"

Done at The Hague, in the building of the Permanent Court of Arbitration, November 11, 1912.

LARDY: *President*

MICHIELS VAN VERDUYNEN: *Secretary General*

ROËLL: *Secretary*

XII

FRANCE AND ITALY

THE MANUBA

COMPROMIS, MARCH 6, 1912

SESSIONS, MARCH 31, 1913-APRIL 26, 1913; THE HAGUE

AWARD, MAY 6, 1913

ARBITRATORS, HAMMARSKJÖLD, FUSINATO, KRIEGE, RENAULT, TAUBE

COMPROMIS

Le Gouvernement de la République Française et le Gouvernement Royal Italien, s'étant mis d'accord le 26 janvier 1912 par application de la Convention d'arbitrage franco-italienne du 25 décembre 1903, renouvelée le 24 décembre 1908 pour confier à un Tribunal d'arbitrage l'examen de la capture et de la saisie momentanée du vapeur postal français „Manouba” par les autorités navales italiennes notamment dans les circonstances spéciales où cette opération a été accomplie et de l'arrestation de vingt-neuf passagers ottomans qui s'y trouvaient embarqués, ainsi que la mission de se prononcer sur les conséquences qui en dérivent,

Les soussignés dûment autorisés à cet effet, sont convenus du Compromis suivant :

ARTICLE I

Un Tribunal arbitral, composé comme il est dit ci-après, est chargé de résoudre les questions suivantes :

THE MANUBA

COMPROMIS

The Government of the French Republic and the Royal Italian Government having agreed on January 26, 1912,¹ in accordance with the Franco-Italian arbitration convention of December 25, 1903, renewed December 24, 1908 to refer to an arbitral tribunal the examination of the capture and temporary seizure of the French mail steamer "Manuba" by the Italian naval authorities particularly under the special circumstances under which the action was taken and of the arrest of twenty-nine Ottoman passengers who were embarked thereon, as well as the task of pronouncing upon the consequences which flow therefrom,

The undersigned duly authorized for that purpose, have agreed upon the following compromis :

ARTICLE I

An arbitral tribunal constituted as hereafter stated, is charged with the decision on the following questions :

¹ JOINT NOTE OF THE FRENCH AMBASSADOR AND THE ITALIAN MINISTER OF FOREIGN AFFAIRS, CONCERNING THE SETTLEMENT OF THE QUESTIONS ARISING OUT OF THE ARREST OF THE FRENCH STEAMERS "CARTHAGE" AND "MANOUBA"

January 26, 1912

The Ambassador of France and the Minister of Foreign Affairs of Italy, having investigated in the most friendly spirit the circumstances which preceded and followed the arrest and search by an Italian cruiser of two French steamers proceeding from Marseilles to Tunis, are happy to report, in thorough accord and before every other consideration, that there has not resulted therefrom on the part of either of the two countries any attitude contrary to the sentiments of sincere and constant friendship which unite them.

This fact has led the two governments without difficulty to decide :

1. That the questions arising from the capture and temporary arrest of the steamer "Carthage" shall be referred for examination to the Court of Arbitration at The Hague under the Franco-Italian arbitration convention of December 23, 1903, renewed December 24, 1908.

2. That as regards the seizure of the steamer "Manouba" and of the Ottoman passengers who were embarked thereon, this action having been taken according to the Italian Government by virtue of the rights which it declares it possesses under the general principles of international law and under Article 47 of the Declaration of London of 1909, the special circumstances under which this action was taken and the consequences flowing therefrom shall likewise be submitted for examination to the high jurisdiction established at The Hague; that, in order to restore the *statu quo ante*, as regards the seized Ottoman passengers, these latter shall be delivered to the French consul at Cagliari, that they may be taken back under his care to the place of embarkation, upon the responsibility of the French Government, which shall take the necessary measures to prevent Ottoman passengers not belonging to the "Red Crescent" but to fighting forces, from sailing from a French port to Tunis or to the scene of military operations.

1°. Les autorités navales italiennes étaient-elles, d'une façon générale et d'après les circonstances spéciales où l'opération a été accomplie, en droit de procéder comme elles ont fait à la capture et à la saisie momentanée du vapeur postal français „Manouba,” ainsi qu'à l'arrestation des vingt-neuf passagers ottomans qui s'y trouvaient embarqués ?

2°. Quelles conséquences pécuniaires ou autres doivent résulter de la solution donnée à la question précédente ?

ARTICLE 2

Le Tribunal sera composé de cinq Arbitres que les deux Gouvernements choisiront parmi les Membres de la Cour permanente d'Arbitrage de La Haye, en désignant celui d'entre eux qui remplira les fonctions de Surarbitre.

ARTICLE 3

A la date du 15 juin 1912, chaque Partie déposera au Bureau de la Cour permanente d'Arbitrage quinze exemplaires de son mémoire, avec les copies certifiées conformes de tous les documents et pièces qu'elle compte invoquer dans la cause.

Le Bureau en assurera sans retard la transmission aux Arbitres et aux Parties, savoir deux exemplaires pour chaque Arbitre, trois exemplaires pour la Partie adverse ; deux exemplaires resteront dans les archives du Bureau.

A la date du 15 août 1912, chaque Partie déposera dans les mêmes conditions que ci-dessus, son contre-mémoire avec les pièces à l'appui et ses conclusions finales.

ARTICLE 4

Chacune des Parties déposera au Bureau de la Cour permanente d'Arbitrage de La Haye, en même temps que son mémoire et à titre de provision, une somme qui sera fixée d'un commun accord.

ARTICLE 5

Le Tribunal se réunira à La Haye, sur la convocation de son Président, dans la deuxième quinzaine du mois de septembre 1912.

1. Were the Italian naval authorities in general and according to the special circumstances under which the action was taken, within their rights in proceeding, as they did, to the capture and temporary seizure of the French mail steamer "Manuba," as well as to the arrest of twenty-nine Ottoman passengers thereon embarked?

2. What should be the pecuniary or other consequences resulting from the decision of the preceding question?

ARTICLE 2

The Tribunal shall be composed of five arbitrators whom the two Governments shall choose from among the members of the Permanent Court of Arbitration at The Hague, designating which of these shall fill the office of President.

ARTICLE 3

On June 15, 1912, each party shall deposit with the Bureau of the Permanent Court of Arbitration fifteen copies of its case, with duly certified copies of all documents and exhibits which it proposes to put in evidence in the case.

The Bureau will undertake without delay to forward them to the arbitrators and to the parties, that is two copies for each arbitrator, three copies for the opposing party; two copies will remain in the archives of the Bureau.

On August 15, 1912, each party will deposit in the same manner as above its counter-case with the documents in support thereof and its final conclusions.

ARTICLE 4

Each party shall deposit with the Bureau of the Permanent Court of Arbitration at The Hague at the same time with its case as security a sum which shall be fixed by common agreement.

ARTICLE 5

The Tribunal shall meet at The Hague, at the call of the President, in the second half of the month of September, 1912. (Adjourned to March 1913.)

ARTICLE 6

Chaque Partie sera représentée par un Agent avec mission de servir d'intermédiaire entre elle et le Tribunal.

Le Tribunal pourra, s'il l'estime nécessaire, demander à l'un ou à l'autre des Agents de lui fournir des explications orales ou écrites, auxquelles l'Agent de la Partie adverse aura le droit de répondre.

ARTICLE 7

La langue français est la langue du Tribunal. Chaque Partie pourra faire usage de sa propre langue.

ARTICLE 8

La sentence du Tribunal sera rendue dans le plus bref délai possible et dans tous les cas dans les trente jours qui suivront la clôture des débats. Toutefois, ce délai pourra être prolongé à la demande du Tribunal et du consentement des Parties.

ARTICLE 9

Le Tribunal est compétent pour régler les conditions d'exécution de sa sentence.

ARTICLE 10

Pour tout ce qui n'est pas prévu par le présent Compromis les dispositions de la Convention de La Haye du 18 octobre 1907 pour le règlement pacifique des conflits internationaux seront applicables au présent Arbitrage.

Fait en double à *Paris*, le 6 mars 1912.

Signé: L. RENAULT

Signé: G. FUSINATO

ARTICLE 6

Each party shall be represented by an agent whose task is to serve as an intermediary between it and the Tribunal.

The Tribunal may, if it thinks necessary, call upon one or the other of the agents to furnish it with oral or written explanations to which the agent of the opposite party shall have the right to reply.

ARTICLE 7

French is the language of the Tribunal. Each party may make use of its own language.

ARTICLE 8

The award of the Tribunal shall be given with as little delay as possible, and in any case within thirty days after the conclusion of the arguments. This period may, however, be extended on the request of the Tribunal and by the consent of the parties.

ARTICLE 9

The Tribunal has the right to determine the conditions of the performance of its award.

ARTICLE 10

As to what is not provided for in this present compromis, the provisions of The Hague convention of October 18, 1907 for the pacific settlement of international disputes shall be applicable to the present arbitration.

Done in duplicate at Paris, March 6, 1912.

Signed : L. RENAULT

Signed : G. FUSINATO

SENTENCE RENDUE LE 6 MAI 1913 PAR LE TRIBUNAL ARBITRAL
DANS L'AFFAIRE DU VAPEUR POSTAL FRANÇAIS "MANOUBA"

Considérant que, par un Accord du 26 janvier 1912 et par un Compromis du 6 mars suivant, le Gouvernement de la République Française et le Gouvernement Royal Italien sont convenus de soumettre à un Tribunal Arbitral composé de cinq Membres la solution des questions suivantes :

1°. Les autorités navales italiennes étaient-elles, d'une façon générale et d'après les circonstances spéciales où l'opération a été accomplie, en droit de procéder comme elles ont fait à la capture et à la saisie momentanée du vapeur postal français „Manouba” ainsi qu'à l'arrestation des vingt-neuf passagers ottomans qui s'y trouvaient embarqués ?

2°. Quelles conséquences pécuniaires ou autres doivent résulter de la solution donnée à la question précédente ?

Considérant qu'en exécution de ce Compromis les deux Gouvernements ont choisi, d'un commun accord, pour constituer le Tribunal Arbitral les Membres suivants de la Cour Permanente d'Arbitrage :

Son Excellence Monsieur Guido Fusinato, Docteur en droit, Ministre d'Etat, ancien Ministre de l'Instruction publique, Professeur honoraire de droit international à l'Université de Turin, Député, Conseiller d'Etat ;

Monsieur Knut Hjalmar Léonard de Hammarskjöld, Docteur en droit, ancien Ministre de la Justice, ancien Ministre des Cultes et de l'Instruction publique, ancien Envoyé extraordinaire et Ministre plénipotentiaire à Copenhague, ancien Président de la Cour d'appel de Jönköping, ancien Professeur à la Faculté de droit d'Upsal, Gouverneur de la province d'Upsal ;

Monsieur Kriege, Docteur en droit, Conseiller actuel intime de Légation et Directeur au Département des Affaires Etrangères, Plénipotentiaire au Conseil Fédéral Allemand ;

Monsieur Louis Renault, Ministre plénipotentiaire, Membre de l'Institut, Professeur à la Faculté de droit de l'Université de Paris et à l'Ecole libre des sciences politiques, Jurisconsulte du Ministère des Affaires Etrangères ;

AWARD RENDERED MAY 6, 1913 BY THE ARBITRAL TRIBUNAL IN
THE CASE OF THE FRENCH MAIL STEAMER "MANOUBA"

Whereas by an agreement of January 26, 1912, and by a compromis of March 6 following, the Government of the French Republic and the Royal Italian Government arranged to submit to an arbitral tribunal composed of five members the decision of the following questions :

1. Were the Italian naval authorities in general and according to the special circumstances under which the action was taken, within their rights in proceeding, as they did, to the capture and temporary seizure of the French mail steamer "Manouba," as well as to the arrest of twenty-nine Ottoman passengers who were thereon embarked ?
2. What should be the pecuniary or other consequences resulting from the decision of the preceding question ?

Whereas in carrying out this compromis the two governments have chosen, by common consent, to constitute the arbitral tribunal, the following members of the Permanent Court of Arbitration :

His Excellency Guido Fusinato, Doctor of Law, Minister of State, formerly Minister of Public Instruction, Honorary Professor of International Law in the University of Turin, Deputy, Counselor of State ;

Mr. Knut Hjalmar Léonard de Hammarskjöld, Doctor of Law, formerly Minister of Justice, formerly Minister of Public Worship and Instruction, formerly Envoy Extraordinary and Minister Plenipotentiary at Copenhagen, formerly President of the Court of Appeals of Jönköping, formerly Professor in the Faculty of Law of Upsala, Governor of the Province of Upsala ;

Mr. Kriege, Doctor of Law, at present Privy Counselor of Legation and Director in the Department of Foreign Affairs, Plenipotentiary in the German Federal Council ;

Mr. Louis Renault, Minister Plenipotentiary, member of the Institute, Professor in the Faculty of Law of the University of Paris and of the *École Libre des Sciences Politiques*, Jurisconsult of the Ministry of Foreign Affairs ;

Son Excellence le Baron Michel de Taube, Docteur en droit, Adjoint du Ministre de l'Instruction publique de Russie, Conseiller d'Etat actuel ;

que les deux Gouvernements ont, en même temps, désigné Monsieur de Hammarskjöld pour remplir les fonctions de Président.

Considérant que, en exécution du Compromis du 6 mars 1912, les Mémoires et Contre-Mémoires ont été dûment échangés entre les Parties et communiqués aux Arbitres ;

Considérant que le Tribunal, constitué comme il est dit ci-dessus, s'est réuni à La Haye le 31 mars 1913 ;

que les deux Gouvernements ont respectivement désigné comme Agents et Conseils,

le Gouvernement de la République Française :

Monsieur Henri Fromageot, Avocat à la Cour d'appel de Paris, Jurisconsulte suppléant du Ministère des Affaires Etrangères, Conseiller du Département de la Marine en droit international, Agent ;

Monsieur André Hesse, Avocat à la Cour d'appel de Paris, Membre de la Chambre des Députés, Conseil ;

Le Gouvernement Royal Italien :

Monsieur Arturo Ricci-Busatti, Envoyé extraordinaire et Ministre plénipotentiaire, Chef du Bureau du Contentieux et de la Législation au Ministère Royal des Affaires Etrangères, Agent ;

Monsieur Dionisio Anzilotti, Professeur de droit international à l'Université de Rome, Conseil.

Considérant que les Agents des Parties ont présenté au Tribunal les conclusions suivantes, savoir,

l'Agent du Gouvernement de la République Française :

PLAISE AU TRIBUNAL,

Sur la première question posée par le Compromis,

Dire et juger que les autorités navales italiennes n'étaient pas, d'une façon générale et d'après les circonstances spéciales où l'opération a été accomplie, en droit de procéder comme elles ont fait à la capture et à la saisie momentanée du vapeur postal français „Manouba” ainsi qu'à l'arrestation des vingt-neuf passagers ottomans qui s'y trouvaient embarqués.

His Excellency Baron Michel de Taube, Doctor of Law, Assistant to the Minister of Public Instruction of Russia, at present Counselor of State;

as the two governments have, at the same time, designated Mr. de Hammarskjöld to perform the duties of President.

Whereas, in accordance with the *compromis* of March 6, 1912, the cases and counter-cases have been duly exchanged by the parties and communicated to the arbitrators;

Whereas the Tribunal, constituted as above stated, met at The Hague on March 31, 1913;

as the two governments, respectively, have appointed as agents and counsel,

The Government of the French Republic:

Mr. Henri Fromageot, Advocate in the Court of Appeal of Paris, Assistant Jurisconsult in the Ministry of Foreign Affairs, Counselor in International Law of the Navy Department, agent;

Mr. André Hesse, Advocate in the Court of Appeal of Paris, Member of the Chamber of Deputies, counsel;

The Royal Italian Government:

Mr. Arturo Ricci-Busatti, Envoy Extraordinary and Minister Plenipotentiary, Chief of the Bureau of Claims and of Legislation of the Royal Ministry of Foreign Affairs, agent;

Mr. Dionisio Anzilotti, Professor of International Law in the University of Rome, counsel.

Whereas the agents of the parties have presented to the Tribunal the following motions, to wit,

The agent of the Government of the French Republic:

MAY IT PLEASE THE TRIBUNAL,

As to the first question raised by the *compromis*,

To say and decide that the Italian naval authorities were not, in general and according to the special circumstances where the act was committed, within their rights in proceeding, as they did, to the capture and temporary seizure of the French mail steamer "Manouba," as well as to the arrest of twenty-nine Ottoman passengers who were thereon embarked.

Sur la seconde question posée par le Compromis,

Dire que le Gouvernement Royal Italien sera tenu de verser au Gouvernement de la République Française la somme de *un franc* de dommages-intérêts, à titre de réparation morale de l'atteinte portée à l'honneur du pavillon français ;

Dire que le Gouvernement Royal Italien sera tenu de verser au Gouvernement de la République la somme de cent mille francs, à titre de sanction et de réparation du préjudice politique et moral résultant de l'infraction par le Gouvernement Royal Italien à ses engagements conventionnels généraux et spéciaux et notamment à la Convention de la Haye du 18 octobre 1907 *relative à certaines restrictions au droit de capture dans la guerre maritime*, article 2, à la Convention de Genève du 6 juillet 1906 *pour l'amélioration du sort des blessés et malades dans les armées en campagne*, article 9, et à l'accord verbalement intervenu entre les deux Gouvernements, le 17 janvier 1912, relativement au contrôle des passagers embarqués sur le paquebot „Manouba” ;

Dire que ladite somme sera versée au Gouvernement de la République pour le bénéfice en être attribué à telle oeuvre ou institution d'intérêt international qu'il plaira au Tribunal d'indiquer ;

Dire que le Gouvernement Royal Italien sera tenu de verser au Gouvernement de la République Française la somme de cent huit mille six cent un francs soixante-dix centimes, montant des indemnités réclamées par les particuliers intéressés, soit dans le paquebot „Manouba,” soit dans son expédition ;

Subsidiairement et pour le cas où, sur ce dernier chef, le Tribunal ne se croirait pas suffisamment éclairé,

Dire, avant faire droit, que, par tel ou tels de ses membres qu'il commettra à cet effet, il sera procédé, dans la Chambre de ses délibérations et en présence des Agents et Conseils des deux Gouvernements, à l'examen des diverses réclamations des particuliers intéressés ;

Dans tous les cas, et par application de l'article 9 du Compromis,

Dire que, à l'expiration d'un délai de trois mois à compter du jour de la sentence, les sommes mises à la charge du Gouvernement Royal Italien et non encore versées seront productives d'intérêts à raison de quatre pour cent par an.

As to the second question raised by the compromis,

To say that the Royal Italian Government shall be held to pay to the Government of the French Republic the sum of one franc compensation, as moral reparation for the offense offered the honor of the French flag ;

To say that the Royal Italian Government shall be held to pay to the Government of the French Republic the sum of one hundred thousand francs, as penalty and reparation for the political and moral injury resulting from the violation by the Royal Italian Government of its general and special conventional engagements, particularly the Convention of The Hague of October 18, 1907, *relative to certain restrictions on the right of capture in maritime warfare*, Article 2 ; the Geneva Convention of July 6, 1906, *for the amelioration of the condition of the wounded and sick in armies in the field*, Article 9 ; and the verbal agreement between the two governments of January 17, 1912, relative to the control of the passengers embarked on the steamer "Manouba" ;

To say that the said sum will be paid to the Government of the Republic to be set apart for the benefit of such work or institution of international interest as it shall please the Tribunal to designate ;

To say that the Royal Italian Government shall be held to pay to the Government of the French Republic the sum of one hundred and eight thousand, six hundred and one francs, seventy centimes, the amount of the indemnities claimed by the private individuals interested either in the steamer "Manouba" or in its voyage ;

Further, and in case that upon this last count, the Tribunal does not consider itself sufficiently informed,

To say, before coming to a decision, that through one or more of its members, whom it shall assign for that duty, it shall proceed, in the deliberative chamber, to examine the different claims of the private individuals interested ;

In any case, and by the application of Article 9 of the compromis,

To say that, upon the expiration of a period of three months from the date of the award, the sums charged against the Royal Italian Government and not yet paid shall bear interest at the rate of four per cent per annum.

Et l'Agent du Gouvernement Royal Italien :

PLAISE AU TRIBUNAL,

Sur la première question posée par le Compromis,

Dire et juger que les autorités navales italiennes étaient pleinement en droit de procéder comme elles ont fait à la capture et à la saisie momentanée du vapeur postal français „Manouba” ainsi qu'à l'arrestation des vingt-neuf passagers ottomans sur lesquels pesait le soupçon qu'ils étaient des militaires, et dont le Gouvernement Italien avait le droit de contrôler la véritable qualité.

En conséquence et sur la seconde question,

Dire et juger qu'aucune conséquence pécuniaire ou autre ne saurait résulter à la charge du Gouvernement Italien de la capture et de la saisie momentanée du vapeur postal français „Manouba” ;

Dire et juger que le Gouvernement Français a prétendu à tort qu'on lui remît les passagers ottomans qui se trouvaient légalement entre les mains des autorités italiennes ;

Dire que le Gouvernement de la République sera tenu de verser au Gouvernement Royal la somme de cent mille francs à titre de sanction et de réparation du préjudice matériel et moral résultant de la violation du droit international, notamment en ce qui concerne le droit que le belligérant a de vérifier la qualité d'individus soupçonnés être des militaires ennemis; trouvés à bord de navires de commerce neutres ;

Dire que ladite somme sera versée au Gouvernement Royal Italien pour être attribuée à telle oeuvre ou institution d'intérêt international qu'il plaira au Tribunal d'indiquer ;

Subsidiairement et pour le cas où le Tribunal ne croirait pas devoir admettre cette forme de sanction,

Dire que le Gouvernement de la République sera tenu de réparer le tort fait au Gouvernement Royal Italien de telle manière qu'il plaira au Tribunal d'indiquer ;

Dans tous les cas,

Dire que le Gouvernement de la République sera tenu de verser au Gouvernement Royal Italien la somme de quatre cent quatorze francs quarante-cinq centimes, montant des frais occasionnés par la saisie du „Manouba” ;

And the agent of the Royal Italian Government :

MAY IT PLEASE THE TRIBUNAL,

As to the first question raised by the compromis,

To say and decide that the Italian naval authorities were entirely within their rights in proceeding, as they did, to the capture and temporary seizure of the French mail steamer "Manouba," as well as to the arrest of the twenty-nine Ottoman passengers on whom rested the suspicion that they were soldiers and whose true character the Italian Government had the right to verify.

In consequence and as to the second question,

To say and decide that no pecuniary or other consequence should be imposed upon the Italian Government for the capture and temporary seizure of the French mail steamer "Manouba";

To say and decide that the French Government has wrongfully claimed the surrender to it of the Ottoman passengers who were legally in the hands of the Italian authorities;

To say that the Government of the Republic shall be held to pay to the Royal Government the sum of one hundred thousand francs as a penalty and reparation for the material and moral injury resulting from the violation of international law, especially in so far as concerns the right of the belligerent to verify the character of individuals suspected of being soldiers of the enemy, when found on board neutral commercial vessels;

To say that the said sum shall be paid to the Royal Italian Government, to be set apart for such work or such institution of international interest as it shall please the Tribunal to indicate;

Further and in case the Tribunal should consider that this kind of penalty should not be admitted;

To say that the Government of the Republic shall be held to make amends for the wrong done the Royal Italian Government in such manner as it shall please the Tribunal to indicate;

In any case,

To say that the Government of the Republic shall be held to pay to the Royal Italian Government the sum of four hundred and fourteen francs, forty-five centimes, the sum of the expenses incurred on account of the seizure of the "Manouba";

Et l'Agent du Gouvernement Royal Italien :

PLAISE AU TRIBUNAL,

Sur la première question posée par le Compromis,

Dire et juger que les autorités navales italiennes étaient pleinement en droit de procéder comme elles ont fait à la capture et à la saisie momentanée du vapeur postal français „Manouba” ainsi qu'à l'arrestation des vingt-neuf passagers ottomans sur lesquels pesait le soupçon qu'ils étaient des militaires, et dont le Gouvernement Italien avait le droit de contrôler la véritable qualité.

En conséquence et sur la seconde question,

Dire et juger qu'aucune conséquence pécuniaire ou autre ne saurait résulter à la charge du Gouvernement Italien de la capture et de la saisie momentanée du vapeur postal français „Manouba” ;

Dire et juger que le Gouvernement Français a prétendu à tort qu'on lui remît les passagers ottomans qui se trouvaient légalement entre les mains des autorités italiennes ;

Dire que le Gouvernement de la République sera tenu de verser au Gouvernement Royal la somme de cent mille francs à titre de sanction et de réparation du préjudice matériel et moral résultant de la violation du droit international, notamment en ce qui concerne le droit que le belligérant a de vérifier la qualité d'individus soupçonnés être des militaires ennemis, trouvés à bord de navires de commerce neutres ;

Dire que ladite somme sera versée au Gouvernement Royal Italien pour être attribuée à telle oeuvre ou institution d'intérêt international qu'il plaira au Tribunal d'indiquer ;

Subsidiairement et pour le cas où le Tribunal ne croirait pas devoir admettre cette forme de sanction,

Dire que le Gouvernement de la République sera tenu de réparer le tort fait au Gouvernement Royal Italien de telle manière qu'il plaira au Tribunal d'indiquer ;

Dans tous les cas,

Dire que le Gouvernement de la République sera tenu de verser au Gouvernement Royal Italien la somme de quatre cent quatorze francs quarante-cinq centimes, montant des frais occasionnés par la saisie du „Manouba” ;

And the agent of the Royal Italian Government :

MAY IT PLEASE THE TRIBUNAL,

As to the first question raised by the compromis,

To say and decide that the Italian naval authorities were entirely within their rights in proceeding, as they did, to the capture and temporary seizure of the French mail steamer "Manouba," as well as to the arrest of the twenty-nine Ottoman passengers on whom rested the suspicion that they were soldiers and whose true character the Italian Government had the right to verify.

In consequence and as to the second question,

To say and decide that no pecuniary or other consequence should be imposed upon the Italian Government for the capture and temporary seizure of the French mail steamer "Manouba";

To say and decide that the French Government has wrongfully claimed the surrender to it of the Ottoman passengers who were legally in the hands of the Italian authorities;

To say that the Government of the Republic shall be held to pay to the Royal Government the sum of one hundred thousand francs as a penalty and reparation for the material and moral injury resulting from the violation of international law, especially in so far as concerns the right of the belligerent to verify the character of individuals suspected of being soldiers of the enemy, when found on board neutral commercial vessels;

To say that the said sum shall be paid to the Royal Italian Government, to be set apart for such work or such institution of international interest as it shall please the Tribunal to indicate;

Further and in case the Tribunal should consider that this kind of penalty should not be admitted;

To say that the Government of the Republic shall be held to make amends for the wrong done the Royal Italian Government in such manner as it shall please the Tribunal to indicate;

In any case,

To say that the Government of the Republic shall be held to pay to the Royal Italian Government the sum of four hundred and fourteen francs, forty-five centimes, the sum of the expenses incurred on account of the seizure of the "Manouba";

Dire que, à l'expiration d'un délai de trois mois à compter du jour de la sentence, les sommes mises à la charge du Gouvernement de la République et non encore versées seront productives d'intérêts à raison de quatre pour cent par an.

Considérant que, après que le Tribunal eut entendu les exposés oraux des Agents des Parties et les explications qu'ils lui ont fournies sur sa demande, les débats ont été dûment déclarés clos.

EN FAIT :

Considérant que le vapeur postal français „Manouba,” de la Compagnie de Navigation Mixte, au cours d'un voyage régulier entre Marseille et Tunis, fut arrêté dans les parages de l'île de San Pietro, le 18 janvier 1912, vers 8 heures du matin, par le contre-torpilleur de la Marine Royale Italienne „Agordat” ;

Considérant que, après constatation de la présence, à bord dudit vapeur, de vingt-neuf passagers turcs, soupçonnés d'appartenir à l'armée ottomane, le „Manouba” fut conduit sous capture à Cagliari ;

Considérant que, arrivé dans ce port le même jour, vers 5 heures du soir, le capitaine du „Manouba” fut sommé de livrer les vingt-neuf passagers susmentionnés aux autorités italiennes et que, sur son refus, ces autorités procédèrent à la saisie du vapeur ;

Considérant enfin que, sur l'invitation du Vice-Consul de France à Cagliari, les vingt-neuf passagers turcs furent livrés le 19 janvier, à 4 heures 30 de l'après-midi, aux autorités italiennes,

et que le „Manouba,” alors relaxé, se remit en route sur Tunis le même jour, à 7 heures 20 du soir.

EN DROIT :

Considérant que, si le Gouvernement Français a dû penser, étant donné les circonstances dans lesquelles la présence de passagers ottomans à bord du „Manouba” lui était signalée, que, moyennant la promesse de faire vérifier le caractère desdits passagers, il exemptait le „Manouba” de toute mesure de visite ou de coercition de la part des autorités navales italiennes, il est établi qu'en toute

To say that, upon the expiration of a period of three months from the date of the award, the sums charged against the Government of the Republic and not yet paid shall bear interest at the rate of four per cent per annum.

Whereas, after the Tribunal had heard the oral statements of the agents of the parties and the explanations which they furnished at its request, the arguments were duly declared closed.

AS TO FACT

Whereas, the French mail steamer "Manouba," of the Compagnie de Navigation Mixte, in the course of a regular voyage between Marseilles and Tunis, was stopped in the neighborhood of the Island of San Pietro January 18, 1912, about eight o'clock in the morning, by the torpedo destroyer "Agordat" of the Royal Italian Navy;

Whereas, after ascertaining the presence on board the said steamer of twenty-nine Turkish passengers, suspected of belonging to the Ottoman army, the "Manouba" was, under capture, conducted to Cagliari;

Whereas, having arrived at this port on the same day, about five o'clock in the evening, the captain of the "Manouba" was summoned to deliver the above-mentioned twenty-nine passengers to the Italian authorities and as, upon his refusal, these authorities proceeded to seize the steamer;

Whereas, finally, as, upon the request of the Vice-Consul of France at Cagliari, the twenty-nine Turkish passengers were delivered on January 19 at half past four in the afternoon, to the Italian authorities, and as the "Manouba," then released, resumed its trip to Tunis on the same day at 7:20 P.M.

AS TO LAW

Whereas, if the French Government properly thought, given the circumstances under which the presence of Ottoman passengers on board the "Manouba" was described to it, that, in consideration of the promise that the character of the said passengers would be verified, the "Manouba" was exempted from the right of visit or coercion on the part of the Italian naval authorities, it is established

bonne foi le Gouvernement Italien n'a pas entendu la chose de cette façon ;

que, par suite, en l'absence d'un accord spécial entre les deux Gouvernements, les autorités navales italiennes ont pu agir conformément au droit commun ;

Considérant que, d'après la teneur du Compromis, l'opération effectuée par les autorités navales italiennes renferme trois phases successives, savoir : la capture, la saisie momentanée du „Manouba” et l'arrestation des vingt-neuf passagers ottomans qui s'y trouvaient embarqués ;

qu'il convient d'examiner d'abord la légitimité de chacune de ces trois phases, regardées comme des actes isolés et indépendants de l'ensemble de l'opération susmentionnée ;

Dans cet ordre d'idées,

Considérant que les autorités navales italiennes avaient, lors de la capture du „Manouba,” des motifs suffisants de croire que les passagers ottomans qui s'y trouvaient embarqués étaient, au moins en partie, des militaires enrôlés dans l'armée ennemie ;

que ces autorités avaient, par conséquent, le droit de se les faire remettre ;

Considérant qu'elles pouvaient, à cet effet, sommer le capitaine de les livrer, ainsi que prendre, en cas de refus, les mesures nécessaires pour l'y contraindre ou pour s'emparer de ces passagers ;

Considérant, d'autre part, que, même étant admis que les passagers ottomans aient pu être considérés comme formant une troupe ou un détachement militaire, rien ne permettait de révoquer en doute l'entière bonne foi de l'armateur et du capitaine du „Manouba” ;

Considérant que, dans ces circonstances, les autorités navales italiennes n'étaient pas en droit de capturer le „Manouba” et de le faire dévier pour suivre l'„Agordat” à Cagliari, si ce n'est comme moyen de contrainte et après que le capitaine eût refusé d'obéir à une sommation de livrer les passagers ottomans ;

que, aucune sommation de ce genre n'ayant eu lieu avant la capture, l'acte de capturer le „Manouba” et de l'amener à Cagliari n'était pas légitime ;

that in complete good faith the Italian Government did not understand the matter in that way;

as, consequently, in the absence of a special agreement between the two governments, the Italian naval authorities were able to act according to the common law;

Whereas, according to the terms of the compromis, the action taken by the Italian naval authorities includes three successive phases, to wit: the capture, the temporary seizure of the "Manouba," and the arrest of the twenty-nine Turkish passengers who were on board;

as it is fitting to examine in the first place the legality of each of these three phases, considered as separate acts and independent of the above-mentioned action as a whole;

In this order of subjects,

Whereas the Italian naval authorities had, at the time of the capture of the "Manouba," sufficient reason to believe that the Ottoman passengers who were embarked thereon were, at least in part, soldiers enlisted in the enemy's army;

as, consequently, these authorities had the right to compel their surrender;

Whereas they might for this end summon the captain to deliver them, as well as take, in case of his refusal, the measures necessary to compel him to do so, or themselves take possession of these passengers;

Whereas, on the other hand, as, even admitting that there might have been grounds for believing that the Ottoman passengers might have been considered as forming a military troop or a detachment, nothing warranted calling in question the entire good faith of the owner and of the captain of the "Manouba";

Whereas as, under these circumstances, the Italian naval authorities had not the right to capture the "Manouba" and to compel it to leave its course and follow the "Agordat" to Cagliari, unless it were for the purpose of arrest and after the captain had refused to obey a summons to surrender the Ottoman passengers;

as, no summons of that kind having been made before the capture, the act of capturing the "Manouba" and taking it to Cagliari was not legal;

Considérant que, la sommation faite à Cagliari étant restée sans effet immédiat, les autorités navales italiennes avaient le droit de prendre les mesures de contrainte nécessaires et, spécialement, de retenir le „Manouba” jusqu’à ce que les passagers ottomans fussent livrés ;

que la saisie effectuée n’était légitime que dans les limites d’un séquestre temporaire et conditionnel ;

Considérant enfin que les autorités navales italiennes avaient le droit de se faire livrer et d’arrêter les passagers ottomans.

Pour ce qui concerne l’ensemble de l’opération,

Considérant que les trois phases dont se compose l’opération unique prévue par le Compromis doivent être appréciées en elles-mêmes, sans que l’illégalité de l’une d’elles doive, dans l’espèce, influencer sur la régularité des autres ;

que l’illégalité de la capture et de la conduite du „Manouba” à Cagliari n’a pas vicié les phases postérieures de l’opération ;

Considérant que la capture ne pourrait non plus être légitimée par la régularité, relative ou absolue, de ces dernières phases envisagées séparément.

Sur la demande tendant à faire condamner le Gouvernement Royal Italien à verser à titre de dommages-intérêts :

1°. la somme de *un franc* pour atteinte portée au pavillon français ;

2°. la somme de cent mille francs pour réparation du préjudice moral et politique résultant de l’inobservation du droit commun international et des conventions réciproquement obligatoires pour l’Italie comme pour la France,

Et sur la demande tendant à faire condamner le Gouvernement de la République Française à verser la somme de cent mille francs à titre de sanction et de réparation du préjudice matériel et moral résultant de la violation du droit international, notamment en ce qui concerne le droit que le belligérant a de vérifier la qualité d’individus soupçonnés être des militaires ennemis, trouvés à bord de navires de commerce neutres,

Considérant que, pour le cas où une Puissance aurait manqué à

Whereas, the summons made at Cagliari having been without immediate effect, the Italian naval authorities had the right to take the necessary measures of compulsion, and specifically, to detain the "Manouba" until the Ottoman passengers were surrendered;

as the seizure effected was legal only to the extent of a temporary and conditional sequestration;

Whereas, finally, as the Italian naval authorities had the right to compel the surrender and to arrest the Ottoman passengers.

As to the action as a whole,

Whereas the three phases, of which the single action provided for by the compromis is composed, should be judged by themselves, without the illegality of any one of them having influence, in this case, on the regularity of the others;

as the illegality in capture and taking of the "Manouba" to Cagliari did not vitiate the successive phases of the action;

Whereas the capture, moreover, could not be legalized by the regularity, relative or absolute, of these last phases considered separately.

Upon the request to the effect that the Royal Italian Government be condemned to pay as compensation :

1. The sum of *one franc* for the offense offered the French flag;

2. The sum of one hundred thousand francs as reparation for the moral and political injury resulting from the failure to observe the international common law and the conventions reciprocally binding upon Italy and upon France,

And upon the request to the effect that the Government of the French Republic be condemned to pay the sum of one hundred thousand francs as a penalty and reparation for the material and moral injury resulting from the violation of international law, especially in so far as concerns the right of the belligerent to verify the character of individuals suspected of being soldiers of the enemy, when found on board neutral commercial vessels,

Whereas, in case a Power has failed to fulfil its obligations,

remplir ses obligations, soit générales soit spéciales, vis-à-vis d'une autre Puissance, la constatation de ce fait, surtout dans une sentence arbitrale, constitue déjà une sanction sérieuse ;

que cette sanction est renforcée, le cas échéant, par le paiement de dommages-intérêts pour les pertes matérielles ;

que, en thèse générale et abstraction faite de situations particulières, ces sanctions paraissent suffisantes ;

que, également en thèse générale, l'introduction d'une autre sanction pécuniaire paraît être superflue et dépasser le but de la juridiction internationale ;

Considérant que, par application de ce qui vient d'être dit, les circonstances de la cause présente ne sauraient motiver une telle sanction supplémentaire ; que, sans autre examen, il n'y a donc pas lieu de donner suite aux demandes susmentionnées.

Sur la demande de l'Agent français tendant à ce que le Gouvernement Royal Italien soit tenu de verser au Gouvernement de la République Française la somme de cent huit mille six cent un francs soixante-dix centimes, montant des indemnités réclamées par les particuliers intéressés, soit dans le vapeur „Manouba,” soit dans son expédition,

Considérant qu'une indemnité est due pour le retard occasionné au „Manouba” par sa capture non justifiée et sa conduite à Cagliari, mais qu'il y a lieu de tenir compte du retard provenant du refus non légitime du capitaine de livrer à Cagliari les vingt-neuf passagers turcs et aussi du fait que le navire n'a pas été entièrement détourné de sa route sur Tunis ;

Considérant que, si les autorités navales italiennes ont opéré la saisie du „Manouba” au lieu du séquestre temporaire et conditionnel qui était légitime, il apparaît que, de ce chef, les intéressés n'ont pas éprouvé de pertes et dommages ;

Considérant que, en faisant état de ces circonstances et aussie des frais occasionnés au Gouvernement Italien par la surveillance du navire retenu, le Tribunal, après avoir entendu les explications concordantes de deux de ses Membres chargés par lui de procéder à une enquête sur lesdites réclamations, a évalué à quatre mille francs la somme due à l'ensemble des intéressés au navire et à son expédition.

whether general or special, to another Power, the statement of this fact, especially in an arbitral award, constitutes already a severe penalty ;

as this penalty is made heavier, if there be occasion, by the payment of compensation for material losses ;

as generally and excluding special circumstances, these penalties appear to be sufficient ;

as, also as a general rule, the imposition of other pecuniary penalty appears to be superfluous and to go beyond the objects of international jurisdiction ;

Whereas, by the application of what has been said, the circumstances of the present case would not justify such a supplementary penalty ; as, without further examination, there is no reason for complying with the above-mentioned requests.

Upon the request of the French agent to the effect that the Royal Italian Government be compelled to pay to the Government of the French Republic the sum of one hundred and eight thousand, six hundred and one francs, seventy centimes, the amount of the indemnities claimed by individuals interested either in the steamer "Manouba" or in its voyage ;

Whereas an indemnity is due for the delay occasioned to the "Manouba" by its unwarranted capture and its taking in to Cagliari, but as account should be taken of the delay caused by the illegal refusal of the captain to surrender the twenty-nine Turkish passengers at Cagliari, as well as the fact that the vessel was not taken entirely out of its course to Tunis ;

Whereas, if the Italian naval authorities effected the seizure of the "Manouba" at the place of its temporary and conditional sequestration, which was legal, it appears that, to this degree, the interested parties have not suffered loss and damages ;

Whereas, taking account of these circumstances and also of the expense incurred by the Italian Government in guarding the detained vessel, the Tribunal, after having heard the concurring explanations of two of its members charged by it to proceed to the investigation of the said claims, has fixed at four thousand francs the amount due all those interested in the vessel and its voyage.

PAR CES MOTIFS,

Le Tribunal Arbitral

Déclare et prononce ce qui suit :

Pour ce qui concerne l'ensemble de l'opération visée dans la première question posée par le Compromis,

Les différentes phases de cette opération ne doivent pas être considérées comme connexes en ce sens que le caractère de l'une doive, dans l'espèce, influencer sur le caractère des autres.

Pour ce qui concerne les différentes phases de ladite opération, apprécées séparément,

Les autorités navales italiennes n'étaient pas, d'une façon générale et d'après les circonstances spéciales où l'opération a été accomplie, en droit de procéder comme elles ont fait à la capture du vapeur postal français „Manouba” et à sa conduite à Cagliari;

Le „Manouba” une fois capturé et amené à Cagliari, les autorités navales italiennes étaient, d'une façon générale et d'après les circonstances spéciales où l'opération a été accomplie, en droit de procéder comme elles ont fait à la saisie momentanée du „Manouba,” dans la mesure où cette saisie ne dépassait pas les limites d'un séquestre temporaire et conditionnel, ayant pour but de contraindre le capitaine du „Manouba” à livrer les vingt-neuf passagers ottomans qui s'y trouvaient embarqués;

Le „Manouba” une fois capturé, amené à Cagliari et saisi, les autorités navales italiennes étaient, d'une façon générale et d'après les circonstances spéciales où l'opération a été accomplie, en droit de procéder comme elles ont fait à l'arrestation des vingt-neuf passagers ottomans qui s'y trouvaient embarqués.

Pour ce qui concerne la seconde question posée par le Compromis,

Le Gouvernement Royal Italien sera tenu, dans les trois mois de la présente sentence, de verser au Gouvernement de la République Française la somme de quatre mille francs, qui, déduction faite des frais de surveillance du „Manouba” dûs au Gouvernement italien, forme le montant des pertes et dommages éprouvés, à raison de la capture et de la conduite du „Manouba” à Cagliari, par les particuliers intéressés au navire et à son expédition.

FOR THESE REASONS

The Arbitral Tribunal

Declares and pronounces as follows :

As regards the action as a whole, covered by the first question raised by the compromis,

The different phases of this action ought not be considered as connected with each other in the sense that the character of any one, in this case, should affect the character of the others.

As to the various phases of the said action considered separately,

The Italian naval authorities were not, in general and according to the special circumstances under which the act was committed, within their rights in proceeding, as they did, to the capture of the French mail steamer "Manouba" and in taking it to Cagliari;

When once the "Manouba" was captured and brought into Cagliari, the Italian naval authorities were, in general and according to the special circumstances under which the act was committed, within their rights in proceeding, as they did, to the momentary seizure of the "Manouba" to the extent that this seizure did not pass beyond the limits of a temporary and conditional sequestration in order to compel the captain of the "Manouba" to deliver the twenty-nine Turkish passengers who were embarked thereon.

When once the "Manouba" was captured, brought into Cagliari and seized, the Italian naval authorities were, in general and according to the special circumstances under which the act was committed, within their rights in proceeding as they did to the arrest of the twenty-nine Ottoman passengers who were on board.

As regards the second question raised by the compromis,

The Royal Italian Government shall be held, within three months from the present award, to pay to the Government of the French Republic the sum of four thousand francs, which after deduction of the amount due the Italian Government for custody of the "Manouba" is the amount of the losses and damages sustained by the individuals interested in the vessel and its voyage, by reason of the capture of the "Manouba" and in taking it to Cagliari.

Il n'y a pas lieu de donner suite aux autres réclamations contenues dans les conclusions des deux Parties.

Fait à La Haye, dans l'Hôtel de la Cour Permanente d'Arbitrage,
le 6 mai 1913.

Le Président : HJ. L. HAMMARSKJÖLD

Le Secrétaire général : MICHIELS VAN VERDUYNEN

Le Secrétaire : RÖELL

There is no reason to comply with the other claims contained in the motions of the two parties.

Done at The Hague, in the building of the Permanent Court of Arbitration, May 6, 1913.

President: HJ. L. HAMMARSKJÖLD
Secretary General: MICHIELS VAN VERDUYNEN
Secretary: RÖELL

XIII

FRANCE AND ITALY

THE CARTHAGE

COMPROMIS, MARCH 6, 1912

SESSIONS, MARCH 31, 1913-APRIL 26, 1913, THE HAGUE

AWARD, MAY 6, 1913

ARBITRATORS, HAMMARSKJÖLD, FUSINATO, KRIEGE, RENAULT, TAUBE

COMPROMIS

Le Gouvernement de la République Française et le Gouvernement Royal Italien, s'étant mis d'accord le 26 janvier 1912 par application de la Convention d'arbitrage du 25 décembre 1903, renouvelée le 24 décembre 1908 pour confier à un Tribunal d'arbitrage l'examen de la capture et de la saisie momentanée du vapeur postal français „Carthage” par les autorités navales italiennes, ainsi que la mission de se prononcer sur les conséquences qui en dérivent,

Les soussignés, dûment autorisés à cet effet, sont convenus du Compromis suivant :

ARTICLE 1

Un Tribunal arbitral, composé comme il est dit ci-après, est chargé de résoudre les questions suivantes :

1°. Les autorités navales italiennes étaient-elles en droit de procéder comme elles ont fait à la capture et à la saisie momentanée du vapeur postal français „Carthage” ?

2°. Quelles conséquences pécuniaires ou autres doivent résulter de la solution donnée à la question précédente ?

ARTICLE 2

Le Tribunal sera composé de cinq Arbitres que les deux Gouvernements choisiront parmi les Membres de la Cour permanente d'Arbi-

THE CARTHAGE

COMPROMIS

The Government of the French Republic and the Royal Italian Government having agreed on January 26, 1912,¹ in accordance with the arbitration convention of December 25, 1903, renewed December 24, 1908, to refer to an arbitral tribunal the examination of the capture and temporary seizure of the French mail steamer "Carthage" by the Italian naval authorities, as well as the task of pronouncing upon the consequences which flow therefrom,

The undersigned, duly authorized for that purpose, have agreed upon the following compromis :

ARTICLE 1

An arbitral tribunal, constituted as hereafter stated, is charged with the decision on the following questions :

1. Were the Italian naval authorities within their rights in proceeding as they did to the capture and temporary seizure of the French mail steamer "Carthage" ?
2. What pecuniary or other consequences ought to follow from the decision given upon the preceding question ?

ARTICLE 2

The Tribunal shall be composed of five arbitrators whom the two Governments shall choose from among the members of the Perma-

¹ See note, p. 327.

trage de La Haye, en désignant celui d'entre eux qui remplira les fonctions de Surarbitre.

ARTICLE 3

A la date du 15 juin 1912, chaque Partie déposera au Bureau de la Cour permanente d'Arbitrage quinze exemplaires de son mémoire, avec les copies certifiées conformes de tous les documents et pièces qu'elle compte invoquer dans la cause.

Le Bureau en assurera sans retard la transmission aux Arbitres et aux Parties, savoir deux exemplaires pour chaque Arbitre, trois exemplaires pour la Partie adverse; deux exemplaires resteront dans les archives du Bureau.

A la date du 15 août 1912, chaque Partie déposera dans les mêmes conditions que ci-dessus son contre-mémoire avec les pièces à l'appui et ses conclusions finales.

ARTICLE 4

Chacune des Parties déposera au Bureau de la Cour permanente d'Arbitrage de La Haye, en même temps que son mémoire et à titre de provision, une somme qui sera fixée d'un commun accord.

ARTICLE 5

Le Tribunal se réunira à La Haye, sur la convocation de son Président, dans la deuxième quinzaine du mois de septembre 1912.

ARTICLE 6

Chaque Partie sera représentée par un Agent avec mission de servir d'intermédiaire entre elle et le Tribunal.

Le Tribunal pourra, s'il l'estime nécessaire, demander à l'un ou à l'autre des Agents de lui fournir des explications orales ou écrites auxquelles l'Agent de la Partie adverse aura le droit de répondre.

ARTICLE 7

La langue française est la langue du Tribunal. Chaque Partie pourra faire usage de sa propre langue.

ARTICLE 8

La sentence du Tribunal devra être rendue dans le plus bref délai possible et dans tous les cas dans les trente jours qui suivront la

nent Court of Arbitration at The Hague, designating which of these shall fill the office of President.

ARTICLE 3

On June 15, 1912, each party shall deposit with the Bureau of the Permanent Court of Arbitration fifteen copies of its case, with duly certified copies of all documents and exhibits which it proposes to put in evidence in the case.

The Bureau will undertake without delay to forward them to the arbitrators and to the parties, that is two copies for each arbitrator, three copies for the opposing party; two copies will remain in the archives of the Bureau.

On August 15, 1912 each party will deposit in the same manner as above its counter-case with the documents in support thereof and its final conclusions.

ARTICLE 4

Each party shall deposit with the Bureau of the Permanent Court of Arbitration at The Hague at the same time with its case as security a sum which shall be fixed by common agreement.

ARTICLE 5

The Tribunal shall meet at The Hague, at the call of the President, in the second half of the month of September, 1912. (Adjourned to March 1913.)

ARTICLE 6

Each party shall be represented by an agent whose task is to serve as an intermediary between it and the Tribunal.

The Tribunal may, if it thinks necessary, call upon one or the other of the agents to furnish it with oral or written explanations to which the agent of the opposite party shall have the right to reply.

ARTICLE 7

French is the language of the Tribunal. Each party may make use of its own language.

ARTICLE 8

The award of the Tribunal shall be given with as little delay as possible, and in any case within thirty days after the conclusion

clôture des débats. Toutefois, ce délai pourra être prolongé à la demande du Tribunal et du consentement des Parties.

ARTICLE 9

Le Tribunal est compétent pour régler les conditions d'exécution de sa sentence.

ARTICLE 10

Pour tout ce qui n'est pas prévu par le présent Compromis, les dispositions de la Convention de La Haye du 18 octobre 1907 pour le règlement pacifique des conflits internationaux seront applicables au présent Arbitrage.

Fait en double à *Paris*, le 6 mars 1912.

Signé: L. RENAULT

Signé: G. FUSINATO

SENTENCE RENDUE LE 6 MAI 1913 PAR LE TRIBUNAL ARBITRAL DANS
L'AFFAIRE DU VAPEUR POSTAL FRANÇAIS „CARTHAGE ”

Considérant que, par un Accord du 26 janvier 1912 et par un Compromis du 6 mars suivant, le Gouvernement de la République Française et le Gouvernement Royal Italien sont convenus de soumettre à un Tribunal Arbitral composé de cinq Membres la solution des questions suivantes :

1°. Les autorités navales italiennes étaient-elles en droit de procéder comme elles ont fait à la capture et à la saisie momentanée du vapeur postal français „Carthage” ?

2°. Quelles conséquences pécuniaires ou autres doivent résulter de la solution donnée à la question précédente ?

Considérant qu'en exécution de ce Compromis les deux Gouvernements ont choisi, d'un commun accord, pour constituer le Tribunal Arbitral les Membres suivants de la Cour Permanente d'Arbitrage :

Son Excellence Monsieur Guido Fusinato, Docteur en droit, Ministre d'Etat, ancien Ministre de l'Instruction publique, Professeur honoraire de droit international à l'Université de Turin, Député, Conseiller d'Etat ;

of the arguments. This period may, however, be extended on the request of the Tribunal and by the consent of the parties.

ARTICLE 9

The Tribunal has the right to determine the conditions of the performance of its award.

ARTICLE 10

As to what is not provided for in this present compromis, the provisions of The Hague convention of October 18, 1907 for the pacific settlement of international disputes shall be applicable to the present arbitration.

Done in duplicate at Paris, March 6, 1912.

Signed : L. RENAULT

Signed : G. FUSINATO

AWARD RENDERED MAY 6, 1913 BY THE ARBITRAL TRIBUNAL IN
THE CASE OF THE FRENCH MAIL STEAMER "CARTHAGE"

Whereas as, by an agreement of January 26, 1912, and by a compromis of March 6 following, the Government of the French Republic and the Royal Italian Government have agreed to submit to an arbitral tribunal composed of five members the decision of the following questions :

1. Were the Italian naval authorities within their rights in proceeding, as they did, to the capture and temporary seizure of the French mail steamer "Carthage" ?
2. What pecuniary or other consequences ought to follow from the decision given upon the preceding question ?

Whereas in carrying out this compromis, the two governments have chosen, by common consent, to constitute the arbitral tribunal, the following members of the Permanent Court of Arbitration :

His Excellency Guido Fusinato, Doctor of Law, Minister of State, formerly Minister of Public Instruction, Honorary Professor of International Law in the University of Turin, Deputy, Counselor of State ;

Monsieur Knut Hjalmar Léonard de Hammarskjöld, Docteur en droit, ancien Ministre de la Justice, ancien Ministre des Cultes et de l'Instruction publique, ancien Envoyé extraordinaire et Ministre plénipotentiaire à Copenhague, ancien Président de la Cour d'appel de Jönköping, ancien Professeur à la Faculté de droit d'Upsal, Gouverneur de la province d'Upsal ;

Monsieur Kriege, Docteur en droit, Conseiller actuel intime de Légation et Directeur au Département des Affaires Etrangères, Plénipotentiaire au Conseil Fédéral Allemand ;

Monsieur Louis Renault, Ministre plénipotentiaire, Membre de l'Institut, Professeur à la Faculté de droit de l'Université de Paris et à l'Ecole libre des sciences politiques, Jurisconsulte du Ministère des Affaires Etrangères ;

Son Excellence le Baron Michel de Taube, Docteur en droit, Adjoint du Ministre de l'Instruction publique de Russie, Conseiller d'Etat actuel ;

que les deux Gouvernements ont, en même temps, désigné Monsieur de Hammarskjöld pour remplir les fonctions de Président.

Considérant que, en exécution du Compromis du 6 mars 1912, les Mémoires et Contre-Mémoires ont été dûment échangés entre les Parties et communiqués aux Arbitres ;

Considérant que le Tribunal, constitué comme il est dit ci-dessus, s'est réuni à La Haye le 31 mars 1913 ;

que les deux Gouvernements ont respectivement désigné comme Agents et Conseils,

le Gouvernement de la République Française :

Monsieur Henri Fromageot, Avocat à la Cour d'appel de Paris, Jurisconsulte suppléant du Ministère des Affaires Etrangères, Conseiller du Département de la Marine en droit international, Agent ;

Monsieur André Hesse, Avocat à la Cour d'appel de Paris, Membre de la Chambre des Députés, Conseil ;

Le Gouvernement Royal Italien :

Monsieur Arturo Ricci-Busatti, Envoyé extraordinaire et Ministre plénipotentiaire, Chef du Bureau du Contentieux et de la Législation au Ministère Royal des Affaires Etrangères, Agent ;

Monsieur Dionisio Anzilotti, Professeur de droit international à l'Université de Rome, Conseil.

Mr. Knut Hjalmar Léonard de Hammarskjöld, Doctor of Law, formerly Minister of Justice, formerly Minister of Public Worship and Instruction, formerly Envoy Extraordinary and Minister Plenipotentiary at Copenhagen, formerly President of the Court of Appeals of Jönköping, formerly Professor in the Faculty of Law of Upsala, Governor of the Province of Upsala ;

Mr. Kriege, Doctor of Law, at present Privy Counselor of Legation and Director in the Department of Foreign Affairs, Plenipotentiary in the German Federal Council ;

Mr. Louis Renault, Minister Plenipotentiary, member of the Institute, Professor in the Faculty of Law of the University of Paris and of the *Ecole Libre des Sciences Politiques*, Jurisconsult in the Ministry of Foreign Affairs ;

His Excellency Baron Michel de Taube, Doctor of Law, Assistant Minister of Public Instruction of Russia, at present Counselor of State ;

as the two governments have, at the same time, designated Mr. de Hammarskjöld to perform the duties of President.

Whereas, in accordance with the compromis of March 6, 1912, the cases and counter-cases have been duly exchanged by the parties and communicated to the arbitrators ;

Whereas the Tribunal, constituted as above stated, met at The Hague on March 31, 1913 ;

as the two governments have respectively appointed as agents and counsel,

The Government of the French Republic :

Mr. Henri Fromageot, Advocate in the Court of Appeals of Paris, Assistant Jurisconsult in the Ministry of Foreign Affairs, Counselor in International Law for the Navy Department, agent ;

Mr. André Hesse, Advocate in the Court of Appeals of Paris, Member of the Chamber of Deputies, counsel ;

The Royal Italian Government :

Mr. Arturo Ricci-Busatti, Envoy Extraordinary and Minister Plenipotentiary, Chief of the Bureau of Claims and Legislation of the Royal Ministry of Foreign Affairs, agent ;

Mr. Dionisio Anzilotti, Professor of International Law in the University of Rome, counsel.

Considérant que les Agents des Parties ont présenté au Tribunal les conclusions suivantes, savoir,

l'Agent du Gouvernement de la République Française :

PLAISE AU TRIBUNAL,

Sur la première question posée par le Compromis,

Dire que les autorités navales italiennes n'étaient pas en droit de procéder comme elles ont fait à la capture et à la saisie momentanée du vapeur postal français „Carthage” ;

En conséquence et sur la seconde question,

Dire que le Gouvernement Royal Italien sera tenu de verser au Gouvernement de la République Française à titre de dommages-intérêts :

1°. La somme de *un franc* pour atteinte portée au pavillon français ;

2°. La somme de cent mille francs pour réparation du préjudice moral et politique résultant de l'inobservation du droit commun international et des conventions réciproquement obligatoires pour l'Italie comme pour la France ;

3°. La somme de cinq cent soixante-seize mille sept cent trente huit francs vingt-trois centimes, montant total des pertes et dommages réclamés par les particuliers intéressés au navire et à son expédition ;

Dire que la somme susdite de cent mille francs sera versée au Gouvernement de la République pour le bénéfice en être attribué à telle oeuvre ou institution d'intérêt international qu'il plaira au Tribunal d'indiquer ;

Subsidiairement et dans le cas où le Tribunal ne se croirait pas, dès à présent, suffisamment éclairé sur le bien fondé des réclamations particulières,

Dire que, par tel ou tels de ses membres qu'il lui plaira de commettre à cet effet, il sera, en présence des Agents et Conseils des deux Gouvernements, procédé, en la Chambre de ses délibérations, à l'examen de chacune desdites réclamations particulières ;

Dans tous les cas, et par application de l'article 9 du Compromis,

Whereas the agents of the parties have presented to the Tribunal the following motions, to-wit,

The agent of the Government of the French Republic :

MAY IT PLEASE THE TRIBUNAL,

As to the first question raised by the compromis,

To say that the Italian naval authorities were not within their rights in proceeding as they did to the capture and temporary seizure of the French mail steamer "Carthage";

In consequence and as to the second question,

To say that the Royal Italian Government shall be held to pay to the Government of the French Republic as compensation :

1. The sum of *one franc* for the offense offered the French flag ;
2. The sum of one hundred thousand francs as reparation for the moral and political injury resulting from the failure to observe the international common law and conventions reciprocally binding upon Italy and upon France ;
3. The sum of five hundred and seventy-six thousand, seven hundred and thirty-eight francs, twenty-three centimes, the total amount of the losses and damages claimed by private parties interested in the steamer and its voyage ;

To say that the above-mentioned sum of one hundred thousand francs shall be paid to the Government of the Republic to be set apart for the benefit of such work or institution of international interest as it shall please the Tribunal to indicate ;

Further, and in case the Tribunal does not consider itself at present sufficiently informed upon the grounds for the individual claims,

To say that through one or more of its members whom it may be pleased to assign for this duty, it shall, in the presence of the agents and counsel of the two governments, proceed, in the deliberative chamber, to the examination of each of the said individual claims ;

In any event, and by the application of Article 9 of the compromis,

Dire que, à l'expiration d'un délai de trois mois à compter du jour de la sentence, les sommes mises à la charge du Gouvernement Royal Italien et non encore versées seront productives d'intérêts à raison de quatre pour cent par an.

Et l'Agent du Gouvernement Royal Italien :

PLAISE AU TRIBUNAL,

Sur la première question posée par le Compromis,

Dire et juger que les autorités navales italiennes étaient pleinement en droit de procéder comme elles ont fait à la capture et à la saisie momentanée du vapeur postal français „Carthage” ;

En conséquence et sur la seconde question,

Dire et juger qu'aucune conséquence pécuniaire ou autre ne saurait résulter, à la charge du Gouvernement Royal Italien, de la capture et de la saisie momentanée du vapeur postal français „Carthage” ;

Dire que le Gouvernement Français sera tenu de verser au Gouvernement Italien la somme de deux mille soixante-douze francs vingt-cinq centimes, montant des frais occasionnés par la saisie du „Carthage” ;

Dire que, à l'expiration d'un délai de trois mois à compter du jour de la sentence, la somme mise à la charge du Gouvernement de la République Française sera, si elle n'a pas encore été versée, productive d'intérêts à raison de quatre pour cent par an.

Considérant que, après que le Tribunal eut entendu les exposés oraux des Agents des Parties et les explications qu'ils lui ont fournies sur sa demande, les débats ont été dûment déclarés clos.

EN FAIT :

Considérant que le vapeur postal français „Carthage,” de la Compagnie Générale Transatlantique, au cours d'un voyage régulier entre Marseille et Tunis, fut arrêté, le 16 janvier 1912, à 6 heures 30 du matin, en pleine mer, à 17 milles des côtes de Sardaigne, par le contre-torpilleur de la Marine Royale Italienne „Agordat” ;

que le commandant de l'„Agordat,” ayant constaté la présence à bord du „Carthage” d'un aéroplane appartenant au sieur Duval,

To say that, upon the expiration of a period of three months from the day of the award, the sums charged against the Royal Italian Government and not yet paid shall bear interest at the rate of four per cent per annum.

And the agent of the Royal Italian Government :

MAY IT PLEASE THE TRIBUNAL

As to the first question raised by the compromis,

To say and decide that the Italian naval authorities were entirely within their rights in proceeding, as they did, to the capture and temporary seizure of the French mail steamer "Carthage";

In consequence and as to the second question,

To say and decide that no pecuniary or other consequence should be imposed upon the Royal Italian Government, for the capture and temporary seizure of the French mail steamer "Carthage";

To say and decide that the French Government shall be held to pay to the Italian Government the sum of two thousand and seventy-two francs, twenty-five centimes, the amount of the expense caused by the seizure of the "Carthage";

To say that, upon the expiration of three months from the day of the award, the sum charged against the Government of the French Republic will, if it has not yet been paid, bear interest at the rate of four per cent per annum.

Whereas, after the Tribunal had heard the oral statements of the agents of the parties and the explanations which they furnished upon its request, the arguments were duly declared closed.

AS TO FACT

Whereas the French mail steamer "Carthage," of the Compagnie Générale Transatlantique, in the course of a regular voyage between Marseilles and Tunis, was stopped on January 16, 1912, at 6 : 30 A.M., in the open sea, 17 miles from the coast of Sardinia, by the torpedo destroyer "Agordat" of the Royal Italian Navy ;

the commander of the "Agordat," having ascertained the presence on board the "Carthage" of an aëroplane belonging to one

aviateur français, et expédié à Tunis à l'adresse de celui-ci, a déclaré au capitaine du „Carthage” que l'aéroplane en question était considéré par le Gouvernement Italien comme contrebande de guerre ;

que, le transbordement de l'aéroplane n'ayant pu être opéré, le capitaine du „Carthage” a reçu l'ordre de suivre l'„Agordat” à Cagliari, où il a été retenu jusqu'au 20 janvier ;

EN DROIT :

Considérant que, d'après les principes universellement admis, un bâtiment de guerre belligérant a, en thèse générale et sans conditions particulières, le droit d'arrêter en pleine mer un navire de commerce neutre et de procéder à la visite pour s'assurer s'il observe les règles sur la neutralité, spécialement au point de vue de la contrebande ;

Considérant, d'autre part, que la légitimité de tout acte dépassant les limites de la visite dépend de l'existence, soit d'un trafic de contrebande, soit de motifs suffisants pour y croire,

que, à cet égard, il faut s'en tenir aux motifs d'ordre juridique ;

Considérant que, dans l'espèce, le „Carthage” n'a pas été seulement arrêté et visité par l'„Agordat”, mais aussi amené à Cagliari, séquestré et retenu un certain temps, après lequel il a été relaxé par voie administrative ;

Considérant que le but poursuivi par les mesures prises contre le paquebot-poste français était d'empêcher le transport de l'aéroplane appartenant au sieur Duval, et embarqué sur le „Carthage” à l'adresse de ce même Duval, à Tunis ;

que cet aéroplane était considéré par les autorités italiennes comme constituant de la contrebande de guerre, tant par sa nature que par sa destination qui, en réalité, aurait été pour les forces ottomanes en Tripolitaine ;

Considérant, pour ce qui concerne la destination hostile de l'aéroplane, élément essentiel de la saisissabilité,

que les renseignements possédés par les autorités italiennes étaient d'une nature trop générale et avaient trop peu de connexité avec l'aéroplane dont il s'agit, pour constituer des motifs juridiques suffisants de croire à une destination hostile quelconque et, par conséquent, pour justifier la capture du navire qui transportait l'aéroplane ;

Duval, a French aviator, and consigned to his address at Tunis, declared to the captain of the "Carthage" that the aëroplane in question was considered by the Italian Government contraband of war ; as the transshipment of the aëroplane could not be made, the captain of the "Carthage" received the order to follow the "Agordat" to Cagliari, where he was detained until January 20 ;

AS TO LAW

Whereas, according to the principles universally acknowledged, a belligerent ship of war has, as a general rule and except for special circumstances, the right to stop in the open sea a neutral commercial vessel and to proceed to visit and search it to assure himself whether it is observing the rules of neutrality, especially as to contraband ;

Whereas, on the other hand, as the legality of every act going beyond the limits of visit and search depends upon the existence either of contraband trade or of sufficient reasons to believe that there is such,

as, in this respect, it is necessary to confine oneself to reasons of a juridical nature ;

Whereas in this case, the "Carthage" was not only stopped and visited by the "Agordat" ; but also taken to Cagliari, sequestered and detained for a certain time, after which it was released by administrative authority ;

Whereas the end sought by the measures taken against the French mail steamer was to prevent the transportation of the aëroplane belonging to one Duval, and shipped on the "Carthage" to the address of this same Duval at Tunis ;

as this aëroplane was considered by the Italian authorities as contraband of war, both by its nature and by its destination, which in reality might have been for the Ottoman forces in Tripolitana ;

Whereas, in so far as concerns the hostile destination of the aëroplane, an essential element of its seizability,

as the information possessed by the Italian authorities was of too general a nature and had too little connection with the aëroplane in question to constitute sufficient juridical reasons to believe in any hostile destination whatever and, consequently, to justify the capture of the vessel which was transporting the aëroplane ;

que la dépêche de Marseille, relatant certains propos tenus par le mécanicien du sieur Duval, n'est parvenue aux autorités italiennes qu'après que le „Carthage” avait été arrêté et conduit à Cagliari et n'a pu, par suite, motiver ces mesures ; que, d'ailleurs, elle n'aurait pu, dans tous les cas, fournir des motifs suffisants dans le sens de ce qui a été dit précédemment ;

Considérant que, ce résultat acquis, il n'importe pas au Tribunal de rechercher si l'aéroplane devait ou non par sa nature être compris dans les articles de la contrebande, soit relative, soit absolue, pas plus que d'examiner si la théorie du voyage continu serait ou non applicable dans l'espèce ;

Considérant que le Tribunal trouve également superflu d'examiner s'il y a eu, lors des mesures prises contre le „Carthage,” des irrégularités de forme et si, en cas d'affirmative, ces irrégularités étaient de nature à vicier des mesures autrement légitimes ;

Considérant que les autorités italiennes n'ont demandé la remise du *port postal* que pour le faire parvenir à destination le plus tôt possible,

que cette demande, qui paraît avoir été d'abord mal comprise par le capitaine du „Carthage,” était conforme à la Convention du 18 octobre 1907 *relative à certaines restrictions à l'exercice du droit de capture*, qui, d'ailleurs, n'était pas ratifiée par les belligérants.

Sur la demande tendant à faire condamner le Gouvernement Royal Italien à verser au Gouvernement de la République Française à titre de dommages-intérêts :

1°. la somme de *un franc* pour atteinte portée au pavillon français ;

2°. la somme de cent mille francs pour réparation du préjudice moral et politique résultant de l'inobservation du droit commun international et des conventions réciproquement obligatoires pour l'Italie comme pour la France,

Considérant que, pour le cas où une Puissance aurait manqué à remplir ses obligations, soit générales, soit spéciales, vis-à-vis d'une autre Puissance, la constatation de ce fait, surtout dans une sentence arbitrale, constitue déjà une sanction sérieuse ;

as the despatch from Marseilles, regarding certain remarks made by the mechanician of Mr. Duval, did not reach the Italian authorities until after the "Carthage" had been stopped and conducted to Cagliari and could not, therefore, have caused these measures; as, moreover, the despatch could not in any case afford a sufficient reason, in the light of what has previously been said;

Whereas, this conclusion being reached, it is not for the Tribunal to inquire whether or not the aëroplane should by its nature be included in articles of contraband, either conditional or absolute, or even to examine whether the theory of continuous voyage should or should not be applicable in this case;

Whereas the Tribunal finds it likewise superfluous to examine whether there were, at the time of the measures taken against the "Carthage," irregularities of form, and if, in case of an affirmative reply, these irregularities were of a kind to vitiate measures otherwise legal;

Whereas the Italian authorities demanded the surrender of the mail only that it might be forwarded to its destination as quickly as possible,

as this demand, which apparently was at first misunderstood by the captain of the "Carthage," was according to the Convention of October 18, 1907, *relative to certain restrictions on the exercise of the right of capture*, which, however, was not ratified by the belligerents.

Upon the request to the effect that the Royal Italian Government be condemned to pay to the Government of the French Republic as compensation:

1. The sum of *one franc* for the offense offered the French flag;
2. The sum of one hundred thousand francs as reparation for the moral and political injury resulting from the failure to observe international common law and conventions reciprocally binding upon France and upon Italy,

Whereas, in case a Power should fail to fulfil its obligations, whether general or special, to another Power, the statement of this fact, especially in an arbitral award, constitutes already a serious penalty;

que cette sanction est renforcée, le cas échéant, par le paiement de dommages-intérêts pour les pertes matérielles ;

que, en thèse générale et abstraction faite de situations particulières, ces sanctions paraissent suffisantes ;

que, également en thèse générale, l'introduction d'une autre sanction pécuniaire paraît être superflue et dépasser le but de la juridiction internationale ;

Considérant que, par application de ce qui vient d'être dit, les circonstances de la cause présente ne sauraient motiver une telle sanction supplémentaire ; que, sans autre examen, il n'y a donc pas lieu de donner suite à la demande susmentionnée.

Sur la demande de l'Agent français tendant à faire condamner le Gouvernement Italien à payer la somme de cinq cent soixante-seize mille sept cent trente huit francs vingt-trois centimes, montant total des pertes et dommages réclamés par les particuliers intéressés au navire et à son expédition,

Considérant que la demande d'une indemnité est, en principe, justifiée ;

Considérant que le Tribunal, après avoir entendu les explications concordantes de deux de ses membres chargés par lui de procéder à une enquête sur lesdites réclamations, a évalué à soixante-quinze mille francs le montant de l'indemnité due à la Compagnie générale transatlantique, à vingt-cinq mille francs le montant de l'indemnité due à l'aviateur Duval et consorts, enfin à soixante mille francs l'indemnité due à l'ensemble des passagers et chargeurs, soit à cent soixante mille francs la somme totale à payer par le Gouvernement Italien au Gouvernement Français.

PAR CES MOTIFS,

Le Tribunal Arbitral

Déclare et prononce ce qui suit :

Les autorités navales italiennes n'étaient pas en droit de procéder comme elles ont fait à la capture et à la saisie momentanée du vapeur postal français „Carthage.”

Le Gouvernement Royal Italien sera tenu, dans les trois mois de la présente sentence, de verser au Gouvernement de la République Française la somme de cent soixante mille francs, montant des pertes et

as this penalty is made heavier, if there be occasion, by the payment of compensation for material losses ;

as generally and excluding special circumstances, these penalties appear to be sufficient ;

as, also, the imposition of other pecuniary penalty appears to be superfluous and to go beyond the purposes of international jurisdiction ;

Whereas, by the application of what has just been said, the circumstances of the present case would not justify such a supplementary penalty ; as, without further examination, there is no occasion to comply with the above-mentioned request.

Upon the request of the French agent to the effect that the Italian Government be condemned to pay the sum of five hundred and seventy-six thousand seven hundred and thirty-eight francs, twenty-three centimes, the total amount of the losses and damages claimed by private parties interested in the vessel and its voyage,

Whereas the request for indemnity is, in principle, justified ;

Whereas the Tribunal, after having heard the concurring explanations of two of its members, charged by it to proceed to an investigation of the said claims, has fixed at seventy-five thousand francs, the amount of indemnity due the Compagnie Générale Transatlantique, at twenty-five thousand francs the amount of indemnity due the aviator Duval and his associates, and finally, at sixty thousand francs the amount due together to the passengers and shippers ; or a total of one hundred and sixty thousand francs to be paid by the Italian Government to the French Government.

FOR THESE REASONS

The Arbitral Tribunal

Declares and pronounces as follows :

The Italian naval authorities were not within their rights in proceeding, as they did, to the capture and temporary seizure of the French mail steamer " Carthage."

The Royal Italian Government shall be obliged, within three months from the present award, to pay to the Government of the French Republic the sum of one hundred and sixty thousand francs, the amount

dommages éprouvés, à raison de la capture et de la saisie du „Carthage,” par les particuliers intéressés au navire et à son expédition.

Il n’y a pas lieu de donner suite aux autres réclamations contenues dans les conclusions des deux Parties.

Fait à La Haye, dans l’Hôtel de la Cour Permanente d’Arbitrage,
le 6 mai 1913.

Le Président : HJ. L. HAMMARSKJÖLD

Le Secrétaire général : MICHIELS VAN VERDUYNEN

Le Secrétaire : RÖELL

of the losses and damages sustained by the private parties interested in the vessel and its voyage, by reason of the capture and seizure of the "Carthage."

There is no reason to comply with the other claims contained in the motions of the two parties.

Done at The Hague, in the building of the Permanent Court of Arbitration, May 6, 1913.

President: HJ. L. HAMMARSKJÖLD

Secretary General: MICHIELS VAN VERDUYNEN

Secretary: RÖELL

XIV
FRANCE AND ITALY
THE TAVIGNANO

COMPROMIS, NOVEMBER 8, 1912

SESSIONS, APRIL 26, 1913-MAY 3, 1913, THE HAGUE

AWARD, NOT RENDERED, SETTLED DIRECTLY BY AGREEMENT OF PARTIES

ARBITRATORS, HAMMARSKJÖLD, FUSINATO, KRIEGE, RENAULT, TAUBE

The Governments of France and Italy made an agreement on April 15, 1912

1. To submit to an International Commission of Inquiry the questions raised by the seizure of the French steamer, "Tavignano" by the Italian torpedo boat "Fulmine" on January 25, 1912 in the neighborhood of Raz-Zira and upon the subject of the shots fired by the Italian torpedo boat "Canopo," on the same day and in the same neighborhood upon the two Tunisian mahones, "Kamouna" and "Gaulois."

2. To transmit if there is reason, the result of the inquiry to the Arbitral Tribunal charged with the determination upon the cases of the "Carthage" and "Manouba," in order that a decision may be pronounced upon the questions of law, that the responsibility may be fixed and that the proper moral and material reparation may be determined.

The Commission of Inquiry¹ made its report on July 23, 1912. The two Governments, unable upon the basis of this report to come to an understanding for the establishing of a direct agreement with a view to a final solution, agreed by a compromis of November 8, 1912, to intrust to the Tribunal charged with the decision upon

¹ Captains, J. R. Seagrave (British Navy), President, Th. Somborn (French Navy), G. Genoese Zerbi (Italian Navy), and Lieutenant L. H. Violette (French Navy), French Secretary, and M. Gravina (Italian Navy), Italian Secretary.

the cases of the "Carthage" and of the "Manouba" the duty of deciding upon the events relating to the seizure of the French steamer "Tavignano" and the firing of the shots at the Tunisian mahones, in order to pronounce on the questions of law, to fix the responsibilities and to determine the proper moral and material reparation.

According to the terms of the compromis, as to what concerned the questions raised by the two incidents, the Tribunal was to take into account the report presented by the International Commission of Inquiry on July 23, 1912, as well as the *procès-verbaux* of this Commission.

On April 26, 1913, the President of the Arbitral Tribunal pronounced the arguments closed on the case of the "Carthage" and on the case of the "Manouba."

By a note dated May 2, the agents announced to the Tribunal that the Governments had reached an agreement to settle directly the matters of the "Tavignano," and the Tunisian mahones, "Kamouna" and "Gaulois," and they requested to be allowed to give notice of this communication and consequently to be dismissed from the case.

The meeting on May 3 took notice of the common declaration of the agents of the two parties and dismissed the case of the "Tavignano" and of the Tunisian mahones.²

² Rapport du Conseil Administratif de la Cour Permanente d'Arbitrage, Treizième Année, pp. 11-13.

XV

NETHERLANDS AND PORTUGAL

DUTCH-PORTUGUESE BOUNDARIES IN THE ISLAND OF TIMOR

COMPROMIS, APRIL 3, 1913

SESSIONS, FIRST STATEMENTS SUBMITTED OCTOBER 30, 1913, SECOND
STATEMENTS MARCH 30, 1914; PARIS

AWARD, JUNE 25, 1914

ARBITRATOR, LARDY

COMPROMIS D'ARBITRAGE SIGNÉ À LA HAYE LE 3 AVRIL 1913

Sa Majesté la Reine des Pays-Bas et le Président de la République Portugaise considérant que l'exécution de la Convention conclue entre les Pays-Bas et le Portugal à La Haye le 1^{er} octobre 1904, concernant la délimitation des possessions néerlandaises et portugaises dans l'île de Timor, a fait naître un différend au sujet de l'arpentage de la partie de la limite visée à l'article 3, 10^o de cette Convention;

désirant mettre fin à l'amiable à ce différend;

vus l'article 14 de la dite Convention et l'article 38 de la Convention pour le règlement pacifique des conflits internationaux conclue à La Haye le 18 octobre 1907;

ont nommé pour Leurs plénipotentiaires, savoir:

* * * * *

lesquels, dûment autorisés à cet effet, sont convenus des articles suivants:

ARTICLE 1^{er}

Le Gouvernement de Sa Majesté la Reine des Pays-Bas et le Gouvernement de la République Portugaise conviennent de sou-

COMPROMIS OF ARBITRATION SIGNED AT THE HAGUE, APRIL 3, 1913

Her Majesty the Queen of the Netherlands and the President of the Portuguese Republic, considering that the execution of the Convention concluded between the Netherlands and Portugal at The Hague October 1, 1904, concerning the delimitation of Dutch and Portuguese possessions in the island of Timor, has given rise to a dispute on the subject of the survey of the part of the boundary considered in article 3, number 10, of that Convention ;

wishing to put an end to this dispute amicably ;

according to article 13 of the said Convention, and article 38 of the Convention for the pacific settlement of international disputes concluded at The Hague October 18, 1907 ;

have named as their plenipotentiaries, to wit ;

* * * * *

who, duly authorized to this end, have agreed upon the following articles :

ARTICLE 1

The Government of Her Majesty the Queen of the Netherlands and the Government of the Portuguese Republic agree to submit

376 COMPROMIS NETHERLANDS AND PORTUGAL

mettre le différend susmentionné à un arbitre unique à choisir parmi les membres de la Cour permanente d'Arbitrage.

Si les deux Gouvernements ne pouvaient tomber d'accord sur le choix de tel arbitre, ils adresseront au Président de la Confédération Suisse la requête de le désigner.

ART. 2

L'arbitre statuant sur les données fournies par les Parties, décidera en se basant sur les traités et les principes généraux du droit international, comment doit être fixée conformément à l'article 3, 10° de la Convention conclue à La Haye le 1^{er} octobre 1904, concernant la délimitation des possessions néerlandaises et portugaises dans l'île de Timor, la limite à partir de la Noël Bilomi jusqu'à la source de la Noël Meto.

ART. 3

Chacune des Parties remettra par l'intermédiaire du Bureau International de la Cour permanente d'Arbitrage à l'arbitre dans un délai de 3 mois après l'échange des ratifications de la présente Convention un mémoire contenant l'exposé de ses droits et les documents à l'appui et en fera parvenir immédiatement une copie certifiée conforme à l'autre Partie.

A l'expiration du délai susnommé chacune des Parties aura un nouveau délai de 3 mois pour remettre par l'intermédiaire sus-indiqué à l'arbitre, si elle le juge utile, un second mémoire dont elle fera parvenir une copie certifiée conforme à l'autre Partie.

L'arbitre est autorisé à accorder à chacune des Parties qui le demanderait une prorogation de 2 mois par rapport aux délais mentionnés dans cet article. Il donnera connaissance de chaque prorogation à la Partie adverse.¹

ART. 4

Après l'échange de ces mémoires aucune communication écrite ou verbale ne sera faite à l'arbitre, à moins que celui-ci ne s'adresse

¹ Une prorogation de deux mois a été accordée aux Parties par l'arbitre pour la remise de leurs seconds mémoires.

the above-mentioned dispute to a single arbitrator to be chosen from the members of the Permanent Court of Arbitration.

If the two Governments cannot reach an agreement upon the choice of such arbitrator, they will address a request to the President of the Swiss Confederation to name him.

ART. 2

The arbitrator relying on the evidence furnished by the Parties, shall decide on the basis of the treaties and the general principles of international law, how, conformably with article 3, number 10 of the Convention concluded at The Hague October 1, 1904, concerning the delimitation of Dutch and Portuguese possessions in the island of Timor, the boundary ought to be fixed from the Noël Bilomi as far as the source of the Noël Meto.

ART. 3

Each of the Parties, through the intermediary of the International Bureau of the Permanent Court of Arbitration, within a period of three months after the exchange of ratifications of the present Convention, shall deliver to the arbitrator a case containing the recital of its claims and the documents in support thereof, and shall immediately furnish to the other Party a duly certified copy.

Upon the expiration of the period above-mentioned each of the Parties shall have a further period of three months for delivering through the intermediary above-mentioned, to the arbitrator, a second case, if it should deem this useful, of which a duly certified copy shall be furnished to the opposite Party.

The arbitrator is authorized to grant each of the Parties who may request it an extension of two months in connection with the period mentioned in this article. He shall give notice of each extension to the opposite Party.¹

ART. 4

After the exchange of these cases no communications written or verbal shall be made to the arbitrator, unless the latter apply

¹ An extension of two months for the deposit of their *second* cases was granted the Parties by the arbitrator.

aux Parties pour obtenir d'elles ou de l'une d'elles des renseignements ultérieurs par écrit.

La Partie qui donnera ces renseignements en fera parvenir immédiatement une copie certifiée conforme à l'autre Partie et celle-ci pourra, si bon lui semble, dans un délai de 2 mois après la réception de cette copie, communiquer par écrit à l'arbitre les observations auxquelles ils lui donneront lieu. Ces observations seront également communiquées immédiatement en copie certifiée conforme à la Partie adverse.

ART. 5

L'arbitre siégera à un endroit à désigner par lui.

ART. 6

L'arbitre fera usage de la langue française tant dans la sentence que dans les communications qu'il aura à adresser aux Parties dans le cours de la procédure. Les mémoires et autres communications émanant des Parties seront dressés dans cette langue.

ART. 7

L'arbitre décidera de toutes les questions qui pourraient surgir relativement à la procédure dans le cours du litige.

ART. 8

Aussitôt après la ratification de la présente Convention chacune des Parties déposera entre les mains de l'arbitre une somme de deux mille francs à titre d'avance pour les frais de la procédure.

ART. 9

La sentence sera communiquée par écrit par l'arbitre aux Parties. Elle sera motivée.

L'arbitre fixera dans sa sentence le montant des frais de la procédure. Chaque Partie supportera ses propres frais et une part égale des dits frais de procédure.

to the Parties to obtain from them or from one of them additional written information.

The Party who shall give this information shall furnish immediately a duly certified copy to the other Party, and the latter may, if it seems good to him, within a period of two months after the receipt of this copy, communicate in writing to the arbitrator the observations to which this shall give rise. These observations shall similarly be communicated immediately in duly certified copy to the opposite Party.

ART. 5

The arbitrator shall sit in a place to be designated by him.

ART. 6

The arbitrator shall make use of the French language in the award as well as in the communications that he may have to address to the Parties in the course of the procedure. The cases and other communications coming from the Parties shall be drawn up in that language.

ART. 7

The arbitrator shall decide on all questions that may arise relative to procedure in the course of the litigation.

ART. 8

Immediately after the ratification of the present Convention each of the Parties shall deposit in the hands of the arbitrator a sum of two thousand francs as security for the expense of the procedure.

ART. 9

The award shall be communicated in writing by the arbitrator to the Parties.

It shall be with reasons.

The arbitrator shall fix in the award the expense of the proceedings. Each Party shall bear its own expenses and an equal part of the said expense of the proceedings.

ART. 10

Les Parties s'engagent à accepter comme jugement en dernier ressort la décision prononcée par l'arbitre dans les limites de la présente Convention et à l'exécuter sans aucune réserve.

Tous différends concernant l'exécution seront soumis à l'arbitre.

ART. 11

La Présente Convention sera ratifiée et entrera en vigueur immédiatement après l'échange des ratifications qui aura lieu à La Haye aussitôt que possible.

En foi de quoi, les plénipotentiaires respectifs ont signé la présente Convention qu'ils ont revêtue de leurs cachets.

Fait en double à La Haye, le 3 avril 1913.

(L.-S.) (*Signé*) R. DE MAREES VAN SWINDEREN

(L.-S.) „ ANTONIO MARIA BARTHOLOMEU FERREIRA

SENTENCE ARBITRALE RENDUE EN EXÉCUTION DU COMPROMIS
SIGNÉ À LA HAYE LE 3 AVRIL 1913 ENTRE LES PAYS-BAS ET LE
PORTUGAL AU SUJET DE LA DÉLIMITATION D'UNE PARTIE DE LEURS
POSSESSIONS DANS L'ÎLE DE TIMOR

Une contestation étant survenue entre le Gouvernement royal néerlandais et celui de la République portugaise au sujet de la délimitation d'une partie de leurs possessions respectives dans l'île de Timor, les deux Gouvernements ont décidé, par une Convention signée à La Haye le 3 avril 1913 et dont les ratifications ont été échangées dans la même ville le 31 juillet suivant, d'en remettre la solution en dernier ressort à un arbitre, et ont à cet effet désigné d'un commun accord le soussigné.

Pour comprendre le sens et la portée du compromis du 3 avril 1913, il y a bien d'exposer succinctement les négociations qui ont précédé ce compromis.

I

HISTORIQUE

L'île de Timor, la dernière à l'orient de la série continue des îles de la Sonde et la plus rapprochée de l'Australie, fut découverte

ART. 10

The Parties agree to accept as judgment without appeal the decision pronounced by the arbitrator within the limits of the present Convention, and to execute it without any reservation.

All disputes concerning the execution shall be submitted to the arbitrator.

ART. 11

The present Convention shall be ratified and shall go into effect immediately after the exchange of ratifications, which shall take place at The Hague as soon as possible.

In witness whereof, the respective plenipotentiaries have signed the present Convention to which has been attached their seals.

Done in duplicate at The Hague, April 3, 1913.

(L.-S.) (*Signed*) R. DE MAREES VAN SWINDEREN

(L.-S.) " ANTONIO MARIA BARTHOLOMEU FERREIRA

ARBITRAL AWARD RENDERED IN EXECUTION OF THE COMPROMIS
SIGNED AT THE HAGUE APRIL 3, 1913, BETWEEN THE NETHERLANDS
AND PORTUGAL ON THE SUBJECT OF THE BOUNDARY OF A PART OF
THEIR POSSESSIONS IN THE ISLAND OF TIMOR

A dispute having arisen between the Royal Netherlands Government and that of the Portuguese Republic on the subject of the delimitation of a part of their respective possessions in the island of Timor, the two Governments decided by a Convention signed at The Hague, April 3, 1913, of which ratifications were exchanged in the same city July 31 following, to refer its solution, as a last resort, to an arbitrator, and have accordingly with common accord designated the undersigned.

To understand the sense and bearing of the compromis of April 3, 1913, it is well succinctly to explain the negotiations which have preceded that compromis.

I

HISTORICAL

The island of Timor, the farthest east of the continuous series of the Sunda islands and the nearest to Australia, was discovered

au XVI^m siècle par les Portugais; cette île mesure environ 500 kilomètres de longueur de l'ouest à l'est sur une largeur de 100 kilomètres au maximum. Une haute chaîne de montagnes, dont certains sommets atteignent près de 3000 mètres d'altitude, sépare l'île dans le sens de la longueur en deux versants.

La partie orientale de l'île, d'une superficie approximative de 19,000 kilomètres carrés avec une population d'environ 300,000 habitants, est portugaise. La partie occidentale, avec une population évaluée en 1907 à 131,000 habitants et une superficie d'environ 20,000 kilomètres carrés, est sous la souveraineté des Pays-Bas, à l'exception du „ Royaume d'Okussi et d'Ambeno," situé sur la côte nord-ouest au milieu de territoires néerlandais de tous les côtés sauf du côté de la mer. Ce nom de „ rois" donné par les Portugais aux chefs des tribus s'explique par le fait que, dans la langue indigène, on les appelle *Leorey*; la syllabe finale de ce mot a été traduite en portugais par le mot *Rey*. Les Néerlandais donnent à ces chefs le titre plus modeste de *radjahs*.

Cette répartition territoriale entre les Pays-Bas et le Portugal repose sur les Accords suivants :

Le 20 avril 1859, un traité signé à Lisbonne et dûment ratifié au cours de l'été de 1860, avait déterminé les frontières respectives par le milieu de l'île, mais avait laissé subsister (art. 2) „l'enclave" néerlandaise de Maucatar au milieu des territoires portugais et „l'enclave" portugaise d'Oikoussi au milieu des territoires néerlandais de l'ouest de l'île. Il fut stipulé (art. 3) que cette „ enclave „ d'Oikoussi comprend l'Etat d'Ambenu partout où y est arboré „ le pavillon portugais, l'État d'Oikoussi proprement dit et celui „ de Noimuti."

Par une autre Convention signée à Lisbonne le 10 juin 1893 et dûment ratifiée, les deux Gouvernements, „ desirant régler dans „ les conditions les plus favorables au développement de la civilisation et du commerce" leurs relations dans l'archipel de Timor, convinrent „ d'établir d'une façon plus claire et plus exacte la démarcation de leurs possessions" dans cette île et de faire disparaître „ les enclaves actuellement existantes" (Préambule et art. I^{er}). Une commission d'experts devait être désignée à l'effet de „ formu-

in the sixteenth century by the Portuguese; the island measures about 500 kilometers in length from west to east by a maximum width of 100 kilometers. A lofty chain of mountains, certain summits of which reach a height of nearly 3000 meters, divides this island lengthwise into two slopes.

The eastern part of the island, of an approximate area of 19,000 square kilometers, with a population of about 300,000 inhabitants, is Portuguese. The western part, with a population estimated in 1907 at 131,000 inhabitants and an area of about 20,000 square kilometers, is under the sovereignty of the Netherlands with the exception of the "Kingdom of Okussi and Ambeno," situated on the northwest coast and surrounded on all sides by Dutch territory except on the side toward the sea. The name of "kings" given by the Portuguese to the chieftains of tribes is explained by the fact that, in the native tongue, they are called *Leorey*; the final syllable of this word has been translated into Portuguese by the word *Rey*. The Dutch give these chieftains the more modest title of *radjahs*.

This division of territory between the Netherlands and Portugal rests on the following agreements:

April 20, 1859, a treaty signed at Lisbon and duly ratified in the course of the summer of 1860, had defined the respective frontiers across the middle of the island, but had allowed to remain (art. 2) the Dutch "enclave" of Maucatar in the midst of Portuguese territory, and the Portuguese "enclave" of "Oikoussi" in the midst of Dutch territory in the west of the island. It was stipulated (art. 3) that the "enclave" of Oikoussi includes the state of Ambenu wherever the "Portuguese flag is raised, the state of Oikoussi proper and that of Noimuti."

By another Convention signed at Lisbon June 10, 1893, and duly ratified, the two Governments, "desiring to determine according to conditions most favorable to the development of civilization and commerce" their relations in the archipelago of Timor, agreed "to establish in a more clear and exact manner the boundary of their possessions" in that island "and to cause the enclaves now existing to disappear" (Preamble and art. I). A commission of experts was to be designated for the purpose of "formulating a

„ler une proposition pouvant servir de base à la conclusion d'une „ Convention ultérieure déterminant la nouvelle ligne de démarcation dans ladite île" (art II). En cas de difficultés, les deux Parties s'engageaient „ à se soumettre à la décision . . . d'arbitres " (art. VII).

Cette commission mixte se rendit sur les lieux et se mit d'accord en 1898-1899 sur la plus grande partie de la délimitation. Toutefois, tant sur la frontière principale au milieu de l'île de Timor que sur la frontière du Royaume d'Okussi-Ambenu dans la partie occidentale de l'île, d'assez nombreuses divergences persistaient. La carte annexée sous N° II¹ indique les prétentions respectives. Une Conférence fut réunie à La Haye du 23 juin au 3 juillet 1902 pour tâcher de les solutionner. Elle arrêta le 3 juillet 1902 un projet qui fut transformé en Convention diplomatique signée à La Haye le 1^{er} octobre 1904 et dûment ratifiée.

Les résultats sommaires de cette Convention de 1904 sont figurés sur la carte transparente annexée sous N°. I; la superposition de la carte transparente N° I sur la carte N° II permet de constater que le Portugal a obtenu, au centre de l'île de Timor, l'enclave néerlandaise de Maukatar, et que les Pays-Bas ont obtenu dans cette même région le Tahakay et le Tamira Ailala.¹ D'autre part, au nord-ouest de l'île de Timor et au sud du territoire désigné par le traité de 1859 sous le nom d'enclave d'Oikussi, les Pays-Bas obtiennent le Noimuti. Enfin la limite orientale contestée de ce territoire d'Oikussi-Ambeno est fixée théoriquement selon une ligne A-C qui devra être „ arpentée et indiquée sur le terrain dans „ le plus court délai possible." (Actes de la Conférence de 1902, séances du 27 juin, pages 10 et 11, et du 28 juin, page 12; Convention du 1^{er} octobre 1904, article 4). La ligne AC admise en Conférence fut définie à l'article 3 chiffre 10 de la Convention de 1904 dans les termes suivants: „ A partir de ce point" (le confluent de la Noël Bilomi avec l'Oè Sunan) „ la limite suit le thalweg de „ l'Oè Sunan, traverse autant que possible Nipani et Kelali (Keli) „ gagne la source de la Noël Meto et suit le thalweg de cette rivière „ jusqu'à son embouchure."

Tout semblait terminé, lorsque les commissaires délimitateurs

¹ Annexe A.

proposal capable of serving as the basis for the conclusion of a further convention fixing the new boundary line in the said island" (art. II). In case of difficulties the two Parties engaged "to submit to the decision of an arbitrator" (art. VII).

This mixed commission visited the places and agreed in 1898-1899 on most of the boundary. Notwithstanding, as to the principal frontier in the middle of the island of Timor as well as to the frontier of the Kingdom of Okussi-Ambenu in the western part of the island, there remained a considerable number of divergencies. The map annexed under No. II¹ indicates the respective claims. A Conference was held at The Hague from June 23 to July 3, 1902, to attempt their solution. It resolved, July 3, 1902, upon a plan which was embodied in a diplomatic Convention signed at The Hague, October 1, 1904, and duly ratified.

The concise results of the Convention of 1904 are shown on the transparent map annexed under No. I; the superposition of the transparent map No. I on the map No. II affords evidence of what Portugal obtained, in the center of the island of Timor, the Dutch enclave of Maukatar, and what the Netherlands obtained in the same region, Tahakay and Tamira Ailala.² On the other hand, in the northwest of the island of Timor and to the south of the territory designated by the treaty of 1859, under the name of Oikussi enclave, the Netherlands obtained Noimuti. Finally, the disputed eastern limit of the territory of Oikussi-Ambeno is fixed theoretically according to a line AC which was to be "surveyed and indicated on the ground within the shortest delay possible" (Acts of the Conference of 1902, sessions of June 27, pages 10 and 11, and of June 28, page 12; Convention of October 1, 1904, article 4). The line AC allowed by the Conference was fixed in article 3, number 10, of the Convention of 1904 in the following terms: "From this point" (the confluence of the Noël Bilomi with the Oè Sunan) "the boundary follows the thalweg of the Oè Sunan, crosses as far as possible Nipani and Kelali (Keli), reaches the source of the Noël Meto, and follows the thalweg of that river to its mouth."

All seemed finished, when the boundary commissioners after arriv-

¹ Annexe A. For convenience and clearness some of the maps have been combined.

² Annexe A. Changes shown by continuous line.

arrivés sur les lieux en juin 1909 pour les opérations du bornage de la frontière orientale de l'Oikussi-Ambeno ne purent se mettre d'accord et décidèrent d'en référer à leurs Gouvernements. Les deux Gouvernements ne purent pas davantage se mettre d'accord et décidèrent de recourir à un arbitrage. Quelle était cette difficulté rencontrée par les commissaires délimitateurs ?

II

LA DIFFICULTE QUI A PROVOQUE L'ARBITRAGE

En procédant aux travaux de délimitation de la frontière orientale de l'Oikussi-Ambeno, les commissaires avaient commencé au nord, sur la côte, et remonté dans la direction du sud le cours de la rivière Noël Meto, qui devait servir de frontière de son embouchure à sa source. Ces opérations eurent lieu entre le 1^{er} et le 10 juin 1909, et une borne fut placée à la source de la Noël Meto. Cette source étant dominée par des falaises abruptes impossibles à franchir, les commissaires résolurent une reconnaissance générale du terrain entre la partie septentrionale et la partie méridionale du territoire encore à délimiter, c'est-à-dire entre la source de la Noël Meto au nord et la rivière Noël Bilomi au sud.

Au nord, un premier dissentiment surgit : La carte (voir annexe III) ¹ signée en 1904 en même temps que la Convention, portait le mot *Kelali* accompagné entre parenthèses du mot *Keli*. Les délégués néerlandais soutinrent que le mot *Keli* désigne, sur le sommet du mont *Kelali*, un point spécial situé à l'ouest de la source de la Noël Meto entre deux pierres „ en pic ” et qui a été indiqué par les indigènes du Tumbaba (néerlandais) comme la limite entre eux et les indigènes (portugais) de l'Ambeno ; ce point est, d'après les commissaires néerlandais, une „ magnifique limite ” naturelle qui suit à peu près la limite figurée sur la carte de 1904. Les commissaires portugais au contraire proposaient „ de suivre . . . quelques thalwegs „ dans le terrain à l'est de la ligne proposée par „ les délégués néerlandais, en partant de la même borne ” placée à la source de la Noël Meto. La commission décida d'arpenter les deux lignes et de laisser la solution aux autorités supérieures.

¹ Annexe B.

ing at the places in June 1909 for the work of marking the eastern frontier of Oikussi-Ambeno could not agree, and decided to refer it to their Governments. The two Governments could no more agree and decided to resort to arbitration. What was this difficulty encountered by the boundary commissioners?

II

THE DIFFICULTY WHICH OCCASIONED THE ARBITRATION

In proceeding to the work of delimitation of the eastern frontier of Oikussi-Ambeno, the commissioners had commenced in the north, on the coast, and ascended in a southerly direction the course of the river Noël Meto, which was to serve as a frontier from its mouth to its source. These operations took place between the 1st and the 10th of June, 1909, and a bound was placed at the source of the Noël Meto. The source being commanded by some steep cliffs impossible to cross, the commissioners decided on a general survey of the country between the northern and southern parts of the territory still to be bounded, that is to say, between the source of the Noël Meto, in the north, and the river Noël Bilomi, in the south.

A disagreement first arose in the north : The map (see Annex III) ¹ signed in 1904, at the same time as the Convention, bore the name *Kelali* accompanied within parentheses by the word *Keli*. The Dutch delegates maintained the word Keli meant on the summit of Mount Kelali, a particular point, situated to the west of the Noël Meto between two "perpendicular" rocks, and which had been indicated by the natives of Tumbaba (Dutch) as the boundary between them and the natives (Portuguese) of Ambeno ; this point is, according to the Dutch commissioners, a "magnificent" natural "boundary" which nearly follows the boundary described on the map of 1904. The Portuguese commissioners, on the contrary, propose "to follow . . . some thalwegs in the country to the east of the line proposed by the Dutch delegates, starting from the same bound" placed at the source of the Noël Meto. The commission decided to survey the two lines and to leave the solution to the higher authorities.

¹ Annexe B. Kelali or Keli is at the break in the western line.

Dans la partie sud, sur la rivière Bilomi, les commissaires constatent, dans leur séance du 17 juin 1909, qu'ils ont suivi de l'ouest à l'est le cours de la Nono Nisi (ou Nise) puis le cours de la Noël Bilomi et qu'ils ont maintenant „ *atteint l'endroit* (où la commission „ de 1889 avait terminé son travail) *où il faut continuer l'arpentage „ vers le nord.*” Ce point avait été désigné dans la Convention de 1904, article 3, chiffres 9 et 10, et sur la carte y annexée, comme le confluent de la Noël Bilomi et de l'Oè Sunan. „ Les quatre „ délégués constatent *qu'à cet endroit, il y a deux affluents venant du „ nord, mais qu'aucun d'eux ne s'appelle l'Oè Sunan.*”

Les délégués néerlandais exposent alors que la contrée située entre ces deux affluents est nommée Sunan, qu'ils ne connaissent d'ailleurs aucun affluent de la Noël Bilomi portant le nom d'Oè Sunan et qu'il n'en existe pas ; ils insistent donc pour que la ligne frontière soit arpentée vers le nord à partir du point désigné sur les cartes de 1899 et de 1904.

Les délégués portugais font observer qu'une rivière nommée Oè Sunan ou Oil Sunan, qui n'est, il est vrai, pas un affluent de la Bilomi, existe plus à l'est et a sa source „ tout près du Bilomi.”

Les commissaires décident à l'unanimité d'arpenter les deux lignes „ *en partant du point*” indiqué sur les cartes de 1899 et de 1904 et „ *où la commission de 1899 a terminé son travail,*”¹ savoir la ligne proposée par les délégués néerlandais dans la direction du nord et la ligne désirée par les Portugais dans la direction de l'est (séance du 17 juin 1909, Premier Mémoire portugais, page 27).

A la séance du 21 juin 1909 et au cours de l'arpentage de la ligne frontière proposée par les délégués portugais dans la direction de l'est en remontant la rivière Noël Bilomi, „ les quatre délégués „ constatent unanimement qu'ils n'ont pas rencontré un affluent „ (de la Noël Bilomi) nommé l'Oé Sunan.” Les Délégués néerlandais font observer que la Bilomi a, dans cette région, changé de nom, à quoi leurs collègues portugais répliquent „ que la rivière „ de Bilomi continue toujours, mais que, suivant les usages „ indigènes, elle porte le nom de la contrée qu'elle traverse.” Enfin et surtout, les délégués portugais font observer qu'à peu de distance de la Bilomi se trouve, sur la rive nord, un mont Kinapua, sur

¹ Point A, Annexe A.

In the southern part, on the Bilomi river, the commissioners state, in their session of June 17, 1909, that they followed from west to east the course of the Nono Nisi (or Nise), then the course of the Noël Bilomi, and that they now "*reached the spot (where the commission of 1899 had terminated its work) where the survey must be continued to the north.*" That point had been designated in the Convention of 1904, Art. 3, Nos. 9 and 10, and on the map annexed, as the confluence of the Noël Bilomi and the Oè Sunan. "The four delegates state that *at that place there are two affluents coming from the north, but neither is called the Oè-Sunan.*"

The Dutch delegates then explain that the region situated between the two affluents is called Sunan, that moreover they do not know of any affluent of the Noël Bilomi bearing the name of Oè Sunan and that none exists; they insist then that the frontier line be surveyed toward the north, starting from the point designated on the maps of 1899 and 1904.

The Portuguese delegates observe that a river called Oè Sunan or Oil Sunan, which is not, it is true, an affluent of the Bilomi, exists farther to the east and has its source "very near the Bilomi."

The commissioners unanimously decided to survey the two lines, "*starting from a point*" indicated on the maps of 1899 and 1904, and "*where the commission of 1899 finished its work,*"¹ that is, the line proposed by the Dutch delegates in a northerly direction and the line desired by the Portuguese in an easterly direction (session of June 17, 1909. First Portuguese Case, page 27).

At the session of June 21, 1909, and in the course of the survey of the frontier line proposed by the Portuguese delegates in the easterly direction ascending the Noël Bilomi river, "the four delegates agree unanimously that they have not met an affluent (of the Noël Bilomi) called the Oè Sunan." The Dutch Delegates observe that the Bilomi has, in this region, changed its name, to which their Portuguese colleagues answer "that the Bilomi river still exists, but that, according to the native customs, it bears the name of the country it crosses." Finally and above all, the Portuguese delegates observe that a short distance from the Bilomi, on the north bank, is a Mount Kinapua, on the opposite slope of

¹ Point A, Annexe A.

le versant opposé duquel se trouve une rivière portant le nom d'Oè Sunan et qui coule vers le nord. Il suffirait de suivre le cours de cette rivière, de remonter ensuite la rivière Noi Fulan et de relier enfin la source de celle-ci avec la source de la Noël Meto déjà reconnue par la commission mixte.

Les délégués néerlandais déclarent inutile de procéder à la reconnaissance de cette rivière, car le mont Kinapua et la limite qui résulterait de la proposition portugaise sont en dehors du territoire qui était contesté en 1899; le mont Tasona¹ figure sur la carte de 1899 sur l'extrême limite orientale des *prétentions* portugaises d'alors, prétentions que le traité de 1904 a écartées; il ne saurait donc être question d'une délimitation allant encore plus loin vers l'est.

Les travaux de la Commission mixte furent suspendus et la question, portée sur le terrain diplomatique, donna lieu à un long échange de correspondances entre les cabinets de La Haye et de Lisbonne.

Ces correspondances ont abouti à l'accord de 1913 confiant à l'arbitre le mandat de décider, d'après „ les données fournies par „ les parties, ” et, en se basant sur les principes généraux du droit, „ comment doit être fixée, conformément à l'art. 3, 10 de la Convention conclue à La Haye le 1^{er} octobre 1904 . . . , la limite à „ partir de la Noël Bilomi jusqu'à la source de la Noël Meto.”

III

LE POINT DE VUE PORTUGAIS

Les principaux arguments invoqués par le Gouvernement de la République portugaise en faveur de la thèse soutenue par ses commissaires délimitateurs peuvent être résumés comme suit :

1. Au point où les travaux de délimitation de 1899 ont été arrêtés et où, d'après le traité de 1904 et d'après la carte y annexée, la Noël Bilomi doit recevoir un affluent du nom de l'Oè Sunan, il est reconnu d'un commun accord qu'il n'existe aucun affluent de ce nom.

2. Il existe au contraire, plus à l'est, une rivière Oè Sunan qui n'est pas, il est vrai, un affluent de la Bilomi, mais qui prend sa

¹ Annexe B.

which is a river bearing the name of Oè Sunan, and which flows north. It would be sufficient to follow the course of that river, then to ascend the Noi Fulan river and finally to connect the source of the latter with the source of the Noël Meto already recognized by the mixed commission.

The Dutch delegates declare it useless to proceed to a survey of this river, for Mount Kinapua and the boundary that would result from the Portuguese proposition are outside the territory which was disputed in 1899; Mount Tasona¹ appears on the map of 1899 on the extreme eastern limit of the Portuguese *claims* of that time, claims which the treaty of 1904 has set aside; thus there could be no question of a boundary going still farther east.

The labors of the mixed commission were suspended and the question, brought within the diplomatic field, gave place to an extended exchange of correspondence between the cabinets of The Hague and of Lisbon.

This correspondence ended in the agreement of 1913, entrusting to the arbitrator the power to decide, according to "the data furnished by the parties" and "on the basis of the general principles of law, how ought to be fixed conformably with article 3, 10 of the Convention concluded at The Hague, October 1, 1904 . . . the boundary starting from the Noël Bilomi to the source of the Noël Meto."

III

THE PORTUGUESE POINT OF VIEW

The principal arguments advanced by the Government of the Portuguese Republic in favor of the position supported by its boundary commissioners may be summarized as follows :

1. At the point where the work of delimitation in 1899 was stopped, and where according to the treaty of 1904 and according to the map annexed thereto, the Noël Bilomi should receive an affluent with the name of Oè Sunan, it is recognized by common agreement that there exists no affluent of that name.
2. There exists, on the contrary, farther to the east, a river Oè Sunan, which is not, it is true, an affluent of the Bilomi, but which

¹ Annexe B.

source très près de cette rivière Bilomi, sur le versant nord de la montagne Kinapua; sur le mont Kinapua se trouve une borne proclamée par de nombreux chefs indigènes comme ayant servi de limite reconnue entre les Ambenos portugais et les Tumbabas néerlandais. De ce même mont Kinapua descend vers la Bilomi un ruisseau, et, du sommet, ces deux cours d'eau semblent se continuer. D'après les chefs indigènes, le cours de cette rivière Oè Sunan est la limite historique et naturelle entre les Ambenos portugais d'une part et les Tumbabas et les Amakonos néerlandais d'autre part.

3. Les mêmes chefs indigènes font rentrer dans l'Ambeno toute la région comprise entre cette rivière d'Oè Sunan à l'est, la rivière Ni Fullan au nord, et le territoire incontestablement portugais de l'Oikoussi Ambeno à l'ouest des monts Kelali et Netton. Sur une carte privée publiée à Batavia, le nom d'Ambeno se trouve même en entier inscrit dans la partie revendiquée à tort aujourd'hui par les Pays-Bas.

4. Le traité de 1859 pose en principe que les États indigènes ne doivent pas être séparés, morcelés; or la délimitation proposée par les Pays-Bas coupe le territoire des Ambenos et priverait ces indigènes de leurs pâturages et terrains maraîchers qui se trouveraient par là situés à l'orient de la frontière et en territoire néerlandais.

5. Rien ne prouve que le bornage à effectuer doive nécessairement commencer au point où le travail de délimitation avait été suspendu en 1899 à la suite d'hostilités entre les indigènes et marqué sur les cartes au confluent de la Bilomi avec le ruisseau l'Oè Sunan qui n'existe pas en réalité à cet endroit. A cet endroit se trouvent deux affluents: le Kaboun et le Nono-Offi. Pourquoi suivre vers le nord le cours du Kaboun plutôt que celui du Nono-Offi qui vient du nord-est et qui se jette au même point dans la Bilomi?

Dans la pensée du Gouvernement portugais, on a voulu seulement donner dans les cartes de 1899 et 1904 aux commissaires délimitateurs „ un graphique destiné à fixer les idées, et comme une „ vague et simple indication de ce qui devait être réglé plus tard.”

La véritable intention des Signataires du traité de 1904, a été de suivre le cours de l'Oè Sunan, là où il est en réalité, c'est-à-dire

takes its source very close to this river Bilomi on the north slope of Kinapua Mountain; on Mount Kinapua there is a bound proclaimed by numerous native chieftains as having served as the recognized boundary between the Portuguese Ambenos and the Dutch Tumbabas. From this same Mount Kinapua a brook runs toward the Bilomi, and from the summit, these two water courses seem to be continuous. According to the native chieftains the course of this river Oè Sunan is the historical and natural boundary between the Portuguese Ambenos on one side and the Dutch Tumbabas and Amakonos on the other side.

3. The same native chieftains include in Ambeno all that region comprised between the river Oè Sunan on the east, the river Ni Fullan on the north and the unquestionably Portuguese territory of Oikoussi Ambeno west of Mounts Kelali and Netton. On a private map published at Batavia the name Ambeno is found even in full inscribed in that part wrongly claimed to-day by the Netherlands.

4. The treaty of 1859 rests on the principle that native states should not be partitioned, parceled out; but the boundary line proposed by the Netherlands divides the territory of the Ambenos and would deprive these natives of their pasture and garden lands that are located to the east of the frontier and in Dutch territory.

5. There is no proof that the boundary established ought necessarily to commence at the point where the work of delimitation had been suspended in 1899 in consequence of hostilities among the natives, and marked on the maps at the confluence of the Bilomi and the Oè Sunan brook which in reality does not exist at that place. At that place there are two affluents, the Kamboun and the Nono-Offi. Why follow the course of the Kamboun to the north rather than that of the Nono-Offi which comes from the north-east and falls into the Bilomi at that point?

In the opinion of the Portuguese Government, it was desired only to give the boundary commissioners, by the maps of 1899 and 1904, "a sketch designed to fix ideas, and as a loose and simple indication of what ought to be settled later."

The true intention of the Signatories of the treaty of 1904 was to follow the course of the Oè Sunan, where it is in reality, that is to

beaucoup plus à l'est. Rien n'empêche donc, dans l'esprit du traité, de remonter la Bilomi jusqu'au point le plus rapproché de la source du vrai Oè Sunan, source si rapprochée du cours de la Bilomi qu'elle en est presque un affluent.

6. La ligne proposée par les Pays-Bas qui, d'après le traité de 1904, doit „ traverser autant que possible Nipani et Kelali (Keli)” ne *traverse* pas Nipani, mais touche seulement Fatu Nipani, c'est-à-dire l'extrémité occidentale de Nipani. Elle ne répond donc pas au programme de 1904.

7. La ligne proposée par les Pays-Bas ne constitue pas une frontière naturelle, tandis que celle suggérée par le Portugal suit des cours d'eau sur presque tout son parcours.

IV

LE POINT DE VUE NÉERLANDAIS

Les principaux arguments du Gouvernement royal néerlandais peuvent être résumés comme suit :

1. Le traité de 1859 n'avait nullement prescrit d'une façon impérative que les territoires indigènes ne doivent pas être divisés ou morcelés. Il a, au contraire, attribué au Portugal „ l'État d'Am- „ benu partout où y est arboré le pavillon portugais,” sanctionnant ainsi non seulement la division d'un État indigène, mais précisément la division de l'État d'Ambenu et cela dans les termes suivants : „ La Néerlande cède au Portugal . . . *cette partie* de l'État d'Ambenu „ ou d'Ambeno qui, depuis plusieurs années, a arboré le pavillon „ portugais.”

Au surplus, le traité de 1859 a pu être et a été effectivement modifié par les traités subséquents et ce sont les traités subséquents qui, aujourd'hui, doivent seuls être pris en considération là où ils ont modifié le traité de 1859.

2. Il n'existe aucune incertitude sur le point auquel les commissaires délimitateurs se sont arrêtés en 1899. Ce point a servi de base aux négociations de 1902 et a été repéré sur la carte (annexe III)¹ signée alors par les négociateurs des deux Pays pour être jointe au projet de traité. Ce projet de 1902 est devenu le traité de 1904.

¹ Annexe A.

say, much farther east. Nothing hinders then, in the sense of the treaty, ascending the Bilomi to the point nearest the source of the true Oè Sunan, a source so near the course of the Bilomi that it is almost an affluent.

6. The line proposed by the Netherlands, which according to the treaty of 1904 ought "to cross Nipani and Kelali (Keli) as far as possible," does not *cross* Nipani but touches only Fatu Nipani, that is to say, the western extremity of Nipani. Hence it does not correspond to the plan of 1904.

7. The line proposed by the Netherlands does not constitute a natural frontier, while that suggested by Portugal follows water courses through nearly all the distance.

IV

THE DUTCH POINT OF VIEW

The principal arguments of the Royal Government of the Netherlands may be summarized as follows:

1. The treaty of 1859 did not prescribe in any imperative manner that native territories should not be partitioned or parceled out. On the contrary, it assigned to Portugal "the State of Ambenu wherever the Portuguese flag is raised there," thus sanctioning not only the division of a native state, but precisely the division of the very State of Ambenu, and that in the following terms: "The Netherlands cedes to Portugal . . . *that part* of the State of Ambenu or of Ambeno which, for several years, has flown the Portuguese flag."

Besides, the treaty of 1859 could have been, and really has been modified by the subsequent treaties and it is the subsequent treaties which to-day ought alone to be taken into consideration where they have modified the treaty of 1859.

2. No uncertainty exists as to the point at which the boundary commissioners stopped in 1899. That point served as a basis for the negotiations of 1902 and was marked on the map (Annex III)¹ signed at that time by the negotiators of the two countries in order to be annexed to the draft of the treaty. That draft of 1902 be-

¹ Point A on Annexe A. See also Annexe B and Annexe C.

C'est de ce point et non d'un autre que part la ligne AC, admise en 1902 comme devant former la frontière (carte annexe I).¹ Cette ligne AC se dirige de ce point vers le nord jusqu'à la source de la rivière Noël Meto et la frontière doit suivre ensuite ce cours d'eau jusqu'à son embouchure dans la mer au nord.

L'emplacement de la source de la Noël Meto a été contradictoirement reconnu en 1909; une borne y a été plantée d'un commun accord. La discussion ne porte que sur le tracé entre cette source et le point A situé à l'endroit où les commissaires se sont arrêtés en 1899.

3. Sur la carte officielle de 1899 (annexe IV)² comme sur la carte officielle de 1904 (annexe III),³ figure au point dont il s'agit un affluent venant du nord et auquel on a, par une erreur que les Pays-Bas ne contestent pas, donné à tort le nom d'Oè Sunan. Cet affluent, qui porte en réalité chez les Tumbabas le nom de Kabun et chez les Ambenos celui de Lèos, répond entièrement à l'intention des Parties contractantes, qui était de suivre, à partir du point A, un affluent venant du nord dans la direction AC. L'erreur de nom a d'autant moins de portée que, très fréquemment dans la région, les cours d'eau portent plusieurs noms, ou changent de nom, ou portent le nom de la contrée qu'ils traversent; or la région à l'est du Kabun ou Lèos (l'Oè Sunan de 1904) porte, d'après le Gouvernement portugais, le nom à consonnance analogue d'Hue Son, et d'après les commissaires néerlandais celui de Sunan, ce qui peut expliquer l'erreur des commissaires.

4. Les chefs indigènes de l'Amakono (néerlandais) ont déclaré (commission mixte, séance du 21 février 1899) que leur pays comprend toute la région „située entre l'Oè Sunan, Nipani, Kelali, „Keli, et la Noël Meto (à l'ouest), la mer de Timor (au nord), la „Noël Boll Bass, les sommets Humusu et Kin Napua (à l'est), „Tasona, la Noël Boho et la Noël Bilomi (au sud).” Or la frontière occidentale décrite ici et indiquée dès 1899 comme séparant les Amakonos (néerlandais) de l'Ambeno (portugais) est précisément celle qui a été consacrée par le traité de 1904. L'Oe Sunan qui y fig-

¹ Annexe A.

² Annexe B.

came the treaty of 1904. It is from this point and not from another that the line AC starts, admitted in 1902 as forming before the frontier (map annex I).¹ That line AC extends from this point north as far as the source of the river Noël Meto, and the frontier ought then to follow that water course as far as its mouth on the sea at the north.

The place of the source of the Noël Meto was differently recognized in 1909: a bound had been located by common agreement. The discussion concerned only the survey between that source and the point A located at the place where the commissioners stopped in 1899.

3. On the official map of 1899 (annex IV) ² as on the official map of 1904 (annex III),² there appears at the point on which there is question an affluent coming from the north, to which, by an error that the Netherlands does not contest, has been given the name of Oè Sunan. This affluent, which in reality bears among the Tum-babas the name of Kabun, and among the Ambenos that of Lèos, corresponds wholly to the intention of the contracting parties, which was to follow, beginning from point A, an affluent coming from the north in the direction AC. The error of name has the less bearing since very frequently in that region the water courses have several names, or change their names, or bear the name of the country they traverse: now the region east of Kabun, or Lèos (the Oè Sunan of 1904) has, according to the Portuguese Government, the name similar in sound, of Hue Son, and according to the Dutch Commissioners that of Sunan, which may explain the error of the commissioners.

4. The native chieftains of Amakono (Dutch) declared (mixed commission, session of February 21, 1899) that their country comprises all the region "situated between the Oè Sunan, Nipani, Kela-li-Keli, and the Noël Meto (on the west), the sea of Timor (on the north), the Noël Boll Bass, the Humusu and Kin Napua summits (on the east), Tasona, the Noël Boho and the Noël Bilomi (on the south)." Now the western frontier here described and indicated in 1899 as separating the Amakonos (Dutch) from Ambeno (Portuguese) is precisely that which has been established by the treaty of

¹ Annexe A.

² Annexe B.

ure ne peut être que le cours d'eau auquel on a donné à tort mais d'un commun accord ce nom dans les cartes officielles de 1899 et de 1904, c'est-à-dire un cours d'eau situé à l'*ouest* du territoire contesté, et non le prétendu Oè Sunan actuellement invoqué par le Portugal, et qui est situé sur la frontière *orientale* du territoire contesté. Le traité de 1904 a attribué aux Pays-Bas ce territoire contesté. C'est donc bien le cours d'eau, peu importe son nom, situé à l'ouest dudit territoire que les parties out entendu adopter comme limite.

La preuve que le Portugal n'a pu, en 1899 et 1904, avoir en vue la rivière orientale à laquelle il donne maintenant le nom d'Oè Sunan, est fournie par le fait qu'à la séance du 21 février 1899, ses commissaires ont proposé comme limite une ligne partant du point où la rivière appelée alors Oè Sunan se jette dans la Bilomi et remontant ensuite vers l'est la Noël Bilomi jusqu'à Nunkalaï (puis traversant Tasona et, à partir de Kin Napua se dirigeant vers le nord jusqu'à Humusu et à la source de la Noël Boll Bass dont le cours aurait servi de frontière jusqu'à son embouchure dans la mer). Cette proposition portugaise de 1899 serait incompréhensible s'il s'agissait d'une rivière autre que celle figurant sur les cartes officielles de 1899 et 1904 sous le nom d'Oè Sunan ; comment pourrait-il être question d'une autre rivière Oè Sunan située à l'*est* de Nunkalaï, alors que Nunkalaï est, en réalité, à l'*ouest* de ce nouvel Oè Sunan découvert par les Portugais et non pas à l'est ?

5. Deux enquêtes récentes instituées par les autorités néerlandaises de l'île de Timor ont, d'ailleurs, confirmé qu'aucune rivière du nom d'Oè Sunan ne prend sa source sur le mont Kinapua ; la rivière qui prend sa source sur le versant nord, à une certaine distance du sommet, porte les noms de Poeamesse ou de Noilpolan et se jette à Fatoe Metassa (Fatu Mutassa des Portugais) dans la Noël Manama, la Ni Fullan des cartes portugaises (Second Mémoire néerlandais, chiffre VII, page 6).

6. Il est exact que la ligne proposée par les Pays-Bas ne traverse pas le territoire de Nipani, mais le traité de 1904 ne l'exige pas. Il stipule que la ligne destinée à relier la source de l'Oè Sunan à la source de la Noël Meto traversera „ autant que possible Nipani.” Comme le territoire à délimiter était inexploré, les mots „ autant

1904. The Oè Sunan which appears there can be only the water course to which mistakenly but by common agreement this name was given in the official maps of 1899 and of 1904, that is to say, a water course situated *west* of the disputed territory, and not the pretended Oè Sunan now set up by Portugal, and which is situated on the *eastern* frontier of the disputed territory. The treaty of 1904 has assigned to the Netherlands this disputed territory. This is then the very water course, whatever its name, situated to the west of the said territory which the parties intended to adopt as a boundary.

The proof that Portugal could not have had in view in 1899 and 1904 the eastern stream to which it now gives the name of Oè Sunan, is furnished by the fact that in the session of February 21, 1899, its commissioners proposed as a boundary a line starting from the point where the stream then called Oè Sunan empties into the Bilomi and then ascending the Noël Bilomi easterly as far as Nunkalaï (then crossing Tasona and from Kin Napua proceeding northerly as far as Humusu and to the source of the Noël Boll Bass of which the course would have served as a frontier as far as its opening into the sea). This Portuguese proposition of 1899 would be unintelligible if there were a question of any other stream than that appearing on the official maps of 1899 and 1904 under the name of Oè Sunan; how could there be question of another river Oè Sunan situated *east* of Nunkalaï, since Nunkalaï is really *west* and not east of this new Oè Sunan discovered by the Portuguese?

5. Two inquiries recently instituted by the Dutch authorities of the island of Timor confirmed, moreover, that no river by name of Oè Sunan takes its source on Mount Kinapua; the stream that takes its source on the north slope, at a certain distance from the summit, has the names Poeamesse and Noilpolan, and empties at Fatoe Metassa (Fatu Mutassa of the Portuguese) into the Noël Manama, the Ni Fullan of the Portuguese maps (second Dutch Case, number VII, page 6).

6. It is true that the line proposed by the Netherlands does not traverse the territory of Nipani, but the treaty of 1904 does not require that. It stipulates that the line designed to unite the source of the Oè Sunan and the source of the Noël Meto shall cross "Nipani as far as possible." As the territory to be bounded was

„que possible” étaient justifiés ; en fait, la ligne suggérée par les Pays-Bas, si elle ne traverse pas tout le territoire de Nipani, en traverse l’extrémité occidentale appelée Fatu Nipani. Or, d’après les déclarations consignées au procès-verbal de délimitation du 21 février 1899, les indigènes, en désignant l’Oè Sunan, Nipani, Kelali et la Noël Meto comme la frontière orientale de l’Okussi Ambeno (portugais) et comme la frontière occidentale de l’Amakono (néerlandais), avaient eu en vue la masse rocheuse de Fatu Nipani formant l’extrémité occidentale de Nipani.

7. La frontière proposée par les Pays-Bas est une frontière naturelle formée par une chaîne de montagnes séparant partout les cours d’eau.

Il n’a jamais été prescrit ou recommandé en 1902-1904 de suivre avant tout des cours d’eau comme limite, et, sur la frontière méridionale de l’Okussi-Ambeno, on a, sur plusieurs points, notamment lorsque la ligne passait du bassin d’une rivière dans un autre, placé des bornes d’un commun accord (Voir notamment l’art. 3 de la Convention de 1904, chiffres 2, 3 et 4).

Il suffira aussi de quelques bornes pour délimiter la frontière sur la ligne de faite proposée par les Pays-Bas.

Le tracé réclamé par le Portugal exigerait d’ailleurs lui aussi des bornes dans la région du mont Kinapua entre la Bilomi et le prétendu nouvel Oè Sunan, et en outre dans la région entre la source de la Noël Meto et la rivière à laquelle les Portugais donnent le nom de Ni Fullan c’est-à-dire aux deux extrémités du tracé portugais.

8. La ligne que le Portugal propose aujourd’hui reproduit en substance ses prétentions de 1899 et de 1902 dans cette région. Or il est incontestable qu’en acceptant à la Conférence de 1902 et en consignant dans le traité de 1904 la ligne AC, le Portugal a cédé un territoire auquel il prétendait auparavant. Il ne saurait équitablement revendiquer aujourd’hui ce même territoire.

V

LES RÈGLES DE DROIT APPLICABLES

A teneur de l’article 2 du compromis, l’arbitre doit baser sa décision non seulement sur les traités en vigueur entre les Pays-

unexplored, the words "as far as possible" were justified; in fact, the line suggested by the Netherlands, if it does not at all cross the territory of Nipani, crosses the western extremity called Fatu Nipani. Now, according to the declarations recorded in the proces-verbal of the delimitation of February 21, 1899, the natives, in designating the Oè Sunan, Nipani, Kelali, and the Noël Meto as the eastern frontier of Okussi-Ambeno (Portuguese) and as the western frontier of Amakono (Dutch), had in view the rocky pile of Fatu Nipani, forming the western end of Nipani.

7. The frontier proposed by the Netherlands is a natural frontier formed by a chain of mountains separating everywhere the water courses.

It was never prescribed or recommended in 1902-1904 absolutely to follow water courses as a boundary, and, on the northern frontier of Okussi-Ambeno, at many points, especially where the line passes from the basin of one river to another, bounds have been placed by common agreement (See especially art. 3 of the Convention of 1904, numbers 2, 3, and 4).

It will be sufficient also to mark by a few bounds the frontier on the ridge line proposed by the Netherlands.

The survey claimed by Portugal would itself also require, moreover, bounds in the region of Mount Kinapua, between the Bilomi and the pretended new Oè Sunan, and elsewhere in the region between the source of the Noël Meto and the stream to which the Portuguese give the name Ni-Fullan, that is to say, at the two ends of the Portuguese survey.

8. The line which Portugal proposes to-day reproduces in substance its claims of 1899 and of 1902 in that region. Now, it is incontestable that by accepting at the Conference of 1902 and in incorporating in the treaty of 1904 the line AC, Portugal ceded a territory to which formerly it made pretensions. Equitably it could not renew its claim to-day to this same territory.

V

THE RULES OF LAW APPLICABLE

According to the terms of article 2 of the Compromis, the arbitrator should base his decision not only on the treaties in force

Bas et le Portugal relatifs à la délimitation de leurs possessions dans l'île de Timor, mais aussi sur „les principes généraux du droit „international.”

Il est presque superflu de rappeler ces principes.

Heffter, *Völkerrecht*, § 94,¹ s'exprime, par exemple, comme suit : „Tous les traités obligent à l'exécution loyale et complète, non „pas seulement de ce qui a été littéralement promis, mais de ce „à quoi on s'est engagé, et aussi de ce qui est conforme à l'essence „de tout traité quelconque comme à l'intention concordante des „contractants (c'est-à-dire à ce qu'on appelle l'esprit des traités).” Heffter ajoute § 95² : „L'interprétation des traités doit, sans le „doute, se faire conformément à l'intention réciproque constatable, „et aussi conformément à ce qui peut être présumé, entre Parties „agissant loyalement et raisonnablement, avoir été promis par „l'une à l'autre à teneur des termes employés.”

Rivier, *Principes du droit des gens*, II, N° 157, formule les mêmes pensées dans les termes suivants : „Il faut avant tout constater „la commune intention des parties : *id quod actum est* . . . La „bonne foi dominant toute cette matière, les traités doivent être „interprétés non pas exclusivement selon leur lettre, mais selon „leur esprit . . . Les principes de l'interprétation des traités „sont, en somme, et *mutatis mutandis*, ceux de l'interprétation des „conventions *entre particuliers*, principes de bon sens et d'expérience „formulés déjà par les Prudents de Rome” (Ulpian, L. 34, au Digeste De R. J. 50.17 : „Semper in stipulationibus et in ceteris contracti- „bus *id sequimur quod actum est*”).

Entre particuliers, les règles auxquelles Rivier renvoie ont été formulées dans les principaux codes en termes suffisamment précis pour se passer de commentaires :

Code civil français, néerlandais, etc., art. 1156-1157. „On doit „dans les Conventions *rechercher quelle a été la commune intention*

¹ 94. Alle Verträge verpflichten zur vollständigen redlichen Erfüllung dessen, was dadurch zu leisten übernommen worden, und zwar nicht blos desjenigen, was dadurch buchstäblich versprochen, sondern auch desjenigen, was dem Wesen eines jeden Vertrages, so wie der übereinstimmenden Absicht der Contrahenten gemäss ist (dem s. g. Geist der Verträge).

² 95. Die Auslegung der Verträge muss im Falle des Zweifels nach der erkennbaren gegenseitigen Absicht, dann aber nach demjenigen geschehen, was dem Einen Theile von dem Anderen nach den dabei gebrauchten Worten als versprochen, bei redlicher und verständiger Gesinnung vorausgesetzt werden darf.

between the Netherlands and Portugal relative to the delimitation of their possessions in the island of Timor, but also on the "general principles of international law."

It is almost superfluous to call these principles to mind.

Heffter, *Völkerrecht*, section 94,¹ for example, is of this opinion: "Every treaty binds to a loyal and complete execution not only of what literally has been promised but of that to which a party has bound itself, and also of what is conformable to the essence of any treaty whatsoever as to the harmonious intention of the contracting parties (that is to say, what is called the spirit of treaties)." Heffter adds, section 95²: "The interpretation of treaties ought, in case of doubt, to be made in conformity with the real mutual intention, and also in conformity with what can be presumed, between Parties acting loyally and with reason, to have been promised by one to the other according to the meaning of the words used."

Rivier, *Principes du droit des gens*, II, No. 157, expresses the same thought in the following terms: "It is necessary, above all, to establish common intention of the parties: *id quod actum est* . . . Good faith prevailing throughout this subject, treaties ought not to be interpreted exclusively according to their letter, but according to their spirit. . . . The principles of interpretation of treaties are, in short, and *mutatis mutandis*, those of the interpretation of agreements *between individuals*, principles of common sense and experience, already formulated by the Jurists of Rome." (Ulpian, L. 34, in Digest De R. J. 50.17: *Semper in stipulationibus et in ceteris contractibus id sequimur quod actum est*").

Between individuals, the rules to which Rivier refers were formulated in the principal codes in terms sufficiently precise to be used as commentaries:

Code civil français, néerlandais, etc., art. 1156-1157. "In Conventions one should seek to find what the common intention of the

¹94. Alle Verträge verpflichten zur vollständigen redlichen Erfüllung dessen, was dadurch zu leisten übernommen worden, und zwar nicht blos desjenigen, was dadurch buchstäblich versprochen, sondern auch desjenigen, was dem Wesen eines jeden Vertrages, so wie der übereinstimmenden Absicht der Contrahenten gemäss ist (dem s. g. Geist der Verträge).

²95. Die Auslegung der Verträge muss im Falle des Zweifels nach der erkennbaren gegenseitigen Absicht, dann aber nach demjenigen geschehen, was dem Einen Theile von dem Anderen nach dem dabei gebrauchten Worten als versprochen, bei redlicher und verständiger Gesinnung vorausgesetzt werden darf.

„ des parties, plutôt que de s'arrêter au sens littéral des termes. Lors-
 „ qu'une clause est susceptible de deux sens, on doit plutôt l'en-
 „ tendre dans celui avec lequel elle peut avoir quelque effet, que
 „ dans le sens avec lequel elle n'en pourrait produire aucun." *Code*
civil allemand de 1896, art. 133: „ Pour l'interprétation d'une
 „ déclaration de volonté, il faut *rechercher la volonté réelle et ne pas*
 „ *s'en tenir au sens littéral de l'expression* (Bei der Auslegung einer
 „ Willenserklärung ist der wirkliche Wille zu erforschen und nicht
 „ an dem buchstäblichen Sinne des Ausdrucks zu haften." *Code*
civil portugais de 1867, art. 684. *Code suisse des obligations* de
 1911, art. 18: „ Pour apprécier la forme et les clauses d'un contrat,
 „ il y a lieu de *rechercher la réelle et commune intention des parties,*
 „ *sans s'arrêter aux expressions ou dénominations inexactes dont*
 „ *elles ont pu se servir, soit par erreur, soit pour déguiser la nature*
 „ véritable de la Convention."

Il est inutile d'insister, le droit des gens comme le droit privé étant sur ce point entièrement concordants.

Il ne reste plus qu'à faire application aux circonstances de la cause de ces règles et à rechercher quelle a été la réelle et commune intention des Pays-Bas et du Portugal lors des négociations de 1902 qui ont abouti à la Convention de 1904.

VI

L'INTENTION DES PARTIES EN SIGNANT LA CONVENTION DE 1904

1. Le traité de Lisbonne du 10 juin 1893 avait eu pour but de chercher à établir une démarcation plus claire et plus exacte des possessions respectives dans l'île de Timor et de faire disparaître les „ enclaves actuellement existantes" (art. 1^{er}). Les „ enclaves" figurant sous ce nom au traité antérieur signé à Lisbonne le 20 avril 1859, étaient celles de Maucatar (art. 2, premier alinéa) et d'Oï Koussi (art. 2, second alinéa, et art. 3, premier alinéa).

Lorsqu'en juin 1902, les Délégués des deux Gouvernements se réunirent à La Haye pour chercher à concilier les propositions divergentes des commissaires délimitateurs envoyés sur les lieux en 1898-1899, les délégués furent immédiatement d'accord pour attribuer au Portugal l'enclave néerlandaise de Maucatar au centre de l'île de Timor, et aux Pays-Bas l'enclave portugaise de Noimuti,

parties was, rather than content himself with the literal sense of the terms. When a clause is susceptible of two meanings, it should be interpreted according to that which gives it some effect, rather than in that meaning which produces no effect." *German Civil Code* of 1896, art. 133: "To interpret a declaration of will, it is necessary to seek the actual will and not to be held to the literal meaning of the expression" ("Bei der Auslegung einer Willenserklärung ist der wirkliche Wille zu erforschen und nicht an dem buchstäblichen Sinne des Ausdrucks zu haften.") *Portuguese Civil Code* of 1867, art. 684. *Swiss Code of Obligations* of 1911, art. 18: "To estimate the character and clauses of a contract, there is occasion to look for the actual common intention of the parties, without dwelling on inexact expressions or names of which use might have been made, either erroneously, or to disguise the true nature of the Convention."

It is useless to insist on the entire accord of private law and the law of nations on this point.

It now remains only to apply these rules to the circumstances of the case and to seek to find what was the actual and mutual intention of the Netherlands and Portugal at the time of the negotiations of 1902 which ended in the Convention of 1904.

VI

THE INTENTION OF THE PARTIES IN SIGNING THE CONVENTION OF 1904

1. The treaty of Lisbon of June 10, 1893, had for its object to seek to establish a clearer and more exact delimitation of the respective possessions in the island of Timor, and to cause "the enclaves now existing" to disappear (art. 1). The "enclaves" appearing under this name in the previous treaty signed at Lisbon April 20, 1859, were those of Maucatar (art. 2, paragraph 1) and of Oi Koussi (art. 2, second paragraph, and art. 3, first paragraph).

When in June, 1902, the delegates of both Governments met at The Hague to seek to reconcile the differing propositions of the boundary commissioners sent to those places in 1898-1899, the delegates immediately agreed to grant Portugal the Dutch enclave of Maucatar in the center of the island of Timor, and to the Netherlands the Portuguese enclave of Noimuti to the south of the "king-

au sud du „royaume” d'Ambeno. A la séance du 26 juin, les Portugais demandèrent, au milieu de l'île, toute la partie du territoire de Fialarang située à l'est de la rivière Mota Bankarna (voir la carte annexe II)¹; ils soutinrent en outre que le royaume d'Ambeno confinant à la mer ne pouvait pas plus être considéré comme une enclave que la Belgique, le Portugal ou les Pays-Bas et qu'il ne pouvait donc être question de l'attribuer à la Néerlande; ils revendiquèrent aussi pour l'Ambeno tout le Hinterland de la côte comprise au nord entre les embouchures de la Noël Meto et de la Noël Boll Bass. Ce Hinterland devait s'étendre au sud jusqu'à la rivière Noël Bilomi et suivre cette rivière de l'ouest à l'est entre le point auquel les commissaires délimitateurs s'étaient, à l'ouest, arrêtés en 1899 et, à l'est, un lieu dénommé Nunkalaï sur la carte dessinée alors en commun par les commissaires délimitateurs des deux Pays. — Les limites de ce territoire contesté ayant été désignées par les quatre lettres A B C D sur une carte (voir annexe II) présentée par les Délégués néerlandais à la Conférence de 1902 la discussion s'engagea sur la ligne occidentale AC préconisée par les Pays-Bas, et la ligne orientale BD réclamée par le Portugal.

Sur la carte ci-annexée sous N° IV,² on a reproduit les prétentions respectives, telles qu'elles résultent de la carte signée en commun par tous les commissaires délimitateurs, à Koepang, le 16 février 1899.

Les délégués néerlandais déclarèrent à la Conférence du 26 juin 1902 que les chefs du territoire de Fialarang, au milieu de l'île de Timor, se refusaient absolument à passer sous la souveraineté du Portugal, en sorte qu'il n'était pas ou n'était plus possible de supprimer cette pointe que le territoire néerlandais fait dans cette région en territoire portugais (Voir carte II).¹

Le premier délégué portugais répliqua qu'il ne fallait pas trop se „laisser guider par des préoccupations d'humanité envers les peuples de l'île de Timor; pour des cas peu graves, ces tribus quittent „leur sol natal pour s'établir ailleurs, et ils ont plusieurs fois quitté „le territoire néerlandais pour s'établir dans le territoire portugais „et inversement.” Finalement, le Délégué portugais renonça au

¹ Annexe A.

² Annexe B.

dom" of Ambeno. In the session of June 26 the Portuguese demanded, in the middle of the island, all the part of the territory of Fialarung, situated east of the river Mota Bankarna (see map, annex II);¹ they maintained further that the kingdom of Ambeno being bounded by the sea, could no more be considered as an enclave than Belgium, Portugal, or the Netherlands, and that there could not then be a question of granting it to the Netherlands; they also claimed for Ambeno all the Hinterland of the coast extending to the north between the mouths of the Noël Meto and of the Noël Boll Bass. This Hinterland was to extend southerly as far as the river Noël Bilomi and to follow that river from west to east between the point at which the boundary commissioners stopped, on the west, in 1899 and, in the east, a place called Nunkalaï on the map at that time drawn up in common by the boundary commissioners of the two countries. — The limits of the disputed territory having been designated by the four letters A B C D on a map (see annex II) presented by the Dutch delegates to the Conference of 1902, the discussion arose upon the western line AC, upheld by the Netherlands, and the eastern line BD claimed by Portugal.

On the map annexed here under Number IV² there has been reproduced the respective claims, as they result from the map signed in common by all the boundary commissioners at Kœpang, February 16, 1899.

The Dutch delegates declared at the Conference of June 26, 1902, that the chieftains of the territory of Fialarang, in the middle of the island of Timor, refused absolutely to pass under the sovereignty of Portugal, so that it was not, or no longer was, possible to detach that projection which the Dutch territory makes into Portuguese territory in that region (see map II).¹

The first Portuguese delegate replied that it was not overneedful "to allow oneself to be guided by humanitarian motives toward the people of the island of Timor; for on account of causes of little importance these tribes leave their native soil to set up elsewhere, and several times they have left Dutch territory to establish themselves in Portuguese territory, and vice versa." Finally the Portu-

¹ Annexe A.

² Annexe B.

territoire des Fialarangs au milieu de l'île de Timor, mais demanda que la frontière orientale de l'Oikoussi fût fixée „ selon la proposition des commissaires néerlandais de 1889.” (Voir cette proposition dans le procès-verbal de la séance tenue à Koëpang le 8 février 1899 dans le premier Mémoire portugais, p. 24.)

Le lendemain 27 juin, le premier Délégué néerlandais accepta la proposition portugaise, mais, pour éviter tout malentendu, réclama pour son Gouvernement „ la certitude *absolue* que la limite orientale „ d'Okussi *représentée par la ligne A C* sera démarquée autant „ que possible sur le terrain même.”

Il y avait, en effet, malentendu, car le premier délégué portugais répondit que sa proposition de la veille „ ne disait pas que la frontière à l'est d'Oikoussi sera formée par la ligne A C, mais au contraire par la ligne proposée par la commission mixte de 1899 et „ indiquée par les lettres A B.”

Le premier délégué néerlandais répliqua aussitôt que, „ si la ligne „ AC n'est pas acceptée comme frontière à l'est d'Oikoussi (et si „ les demandes néerlandaises pour la frontière au centre de Timor „ ne sont pas agréées) . . . les délégués néerlandais retirent leur „ consentement à la proposition portugaise . . . Jamais ils ne „ pourraient soumettre à leur Gouvernement un projet ne satisfaisant pas à ces conditions.” — Le délégué néerlandais termina en déclarant que, si un accord amiable sur ces bases n'intervenait pas, les Pays-Bas recourraient à l'arbitrage prévu par la Convention de 1893 sur la „ question des enclaves,” donnant ainsi à entendre qu'en cas de refus de la ligne A C pour la frontière orientale de l'Ambeno, les Pays-Bas soulèveraient la question beaucoup plus vaste de savoir si la totalité de l'Ambeno n'était pas une enclave pouvant revenir logiquement à la Néerlande, puisque l'Ambeno avait été à plusieurs reprises désigné comme enclave dans le traité de 1859 et puisqu'un des buts de la Convention de 1893 était la „ suppression des enclaves.”

A la séance du 28 juin, les délégués portugais „ ayant examiné „ sérieusement la proposition des délégués néerlandais, émise dans „ la séance du 27 juin, ont résolu d'accepter cette proposition, ainsi „ que les conditions posées par eux (par les délégués néerlandais) „ à ce sujet.”

guese Delegate renounced the territory of the Fialarangs in the middle of the island of Timor, but asked that the western frontier of Oikoussi be fixed "according to the proposition of the Dutch commissioners of 1899." (See this proposition in the procès-verbal of the session held at Kœpang February 8, 1899, in the first Portuguese Case, p. 24.)

The next day, June 27, the first Dutch delegate accepted the Portuguese proposition, but, to avoid all misunderstanding, claimed for his Government "*absolute* assurance that the eastern limit of Oikussi *represented by the line A C* shall be laid out so far as possible on the ground itself."

There was, in fact, misunderstanding, for the first Portuguese delegate replied that his proposition of the day before "did not say that the frontier east of Oikussi would be formed by the line A C, but on the contrary by the line proposed by the mixed commission of 1899 and indicated by the letters A B."

The first Dutch delegate replied immediately that "if the line A C is not accepted as the frontier on the east of Oikussi (and if the Dutch demands for the frontier in the center of Timor are not agreed upon) . . . the Dutch delegates withdraw their consent to the Portuguese proposition. . . . They would never be able to submit to their Government a plan not satisfying these conditions." — The Dutch delegate ended by declaring that if a friendly agreement on this basis could not be reached, the Netherlands would have recourse to the arbitration provided for by the Convention of 1893 on the "enclave question," giving thus the impression that in case of rejection of the line A C for the eastern frontier of Ambeno the Netherlands would raise the much broader question as to whether the whole of Ambeno was not an enclave that logically might revert to the Netherlands, since Ambeno had been designated several times in the treaty of 1859 as an enclave, and since one of the objects of the Convention of 1893 was the "suppression of enclaves."

At the session of June 28, the Portuguese delegates "having seriously examined the proposition of the Dutch delegates, stated in the session of June 27, resolved to accept that proposition as well as the conditions advanced by them (by the Dutch delegates) on that subject."

Il importait de reproduire avec détails cette discussion, parce qu'elle jette un jour décisif sur la réelle et commune intention des Parties. — Le Portugal s'est déclaré satisfait de la situation qui lui était offerte. Au milieu de l'île de Timor, il gagnait la grande enclave de Maukatar; s'il n'y gagnait pas le pays des Fialarangs, il conservait dans l'ouest de l'île de Timor l'Oikussi Ambeno et évitait d'avoir à discuter devant des arbitres la question délicate de savoir si ce royaume était ou non une „ enclave ” susceptible d'être attribuée en entier aux Pays-Bas; le Portugal a préféré dans ces circonstances renoncer à la partie orientale contestée de l'Oikussi Ambeno plutôt que de risquer d'y perdre davantage ou même d'y perdre tout; il a trouvé, en un mot, dans l'ensemble de la négociation, des compensations jugées par lui suffisantes à l'abandon de la ligne B D et de la ligne intermédiaire A B qu'il réclamait. — Il a finalement accepté la ligne A C réclamée *sine qua non* par les Pays-Bas.

Il est donc certain que cette ligne A C doit, dans l'intention des Parties, être considérée comme une *concession* faite par le Portugal aux Pays-Bas et ce fait a été proclamé par les Délégués portugais eux-mêmes dans le Mémoire qu'ils ont remis à la séance du 26 juin 1902, au cours des Conférences de La Haye, en ces termes: „ ces „ territoires représentent une *réduction considérable* des frontières „ du royaume d'Ocussi-Ambenou.”

2. Qu'est-ce que la ligne A C?

a) Et d'abord où est le point C? A l'embouchure de la rivière Noël Meto dans la mer de Timor au nord de l'île. Aucune contestation n'existe à ce sujet, et la Convention de 1904, article 3, chiffre 10, stipule expressément que la frontière suit le thalweg de la Noël Meto de sa source à son embouchure. — Entre 1899 et 1902-1904, le Portugal prétendait au contraire à tout le territoire à l'est de la Noël Meto jusqu'à la rivière Noël Boll Bass; l'embouchure de la Noël Boll Bass était le point B, terminus nord de la ligne A B revendiquée par le Portugal (Proposition portugaise, séance du 21 février 1899, 2^e Mémoire néerlandais annexe II, Procès-verbaux des Conférences de La Haye 1902, page 10, et cartes ci-annexées I et II).¹

¹ Annexe A.

It is important to reproduce this discussion in detail, since it throws a decisive light on the real and mutual intention of the Parties. Portugal declared herself satisfied with the condition which was offered to her. In the middle of the island of Timor she gained the large enclave of Maukatar; if she did not gain there the country of the Fialarangs, she retained Oikussi Ambeno in the west of the island of Timor, and avoided having to discuss before arbitrators the delicate question as to whether this realm was or was not an "enclave" susceptible of being granted in its entirety to the Netherlands; Portugal had preferred under these circumstances to give up the disputed eastern part of Oikussi Ambeno rather than to risk losing more of it or even all. She had found, in a word, throughout the negotiations, compensations deemed sufficient by her for abandoning line B D and the intermediate line A B that she claimed. — She finally accepted the line A C claimed by the Netherlands *sine qua non*.

It is then certain that this line A C should in the intention of the Parties, be considered as a *concession* made by Portugal to the Netherlands, and that fact was stated by the Portuguese delegates themselves, in the Case which they presented at the session of June 26, 1902, during the Conferences at The Hague, in these terms: "these territories represent a *considerable reduction* of the frontiers of the kingdom of Ocussi-Ambenou."

2. What is the line A C?

a) And first where is the point C? At the mouth of the river Noël Meto on the Sea of Timor in the northern part of the island. No dispute exists on this subject, and the Convention of 1904, article 3, number 10, expressly stipulates that the frontier follows the thalweg of the Noël Meto from its source to its mouth. — Between 1899 and 1902-1904 Portugal on the contrary claimed all that territory east of the Noël Meto as far as the river Noël Boll Bass; the mouth of the Noël Boll Bass was point B, northern end of the line A B claimed by Portugal (Portuguese proposition, session of February 21, 1899, 2d Dutch Case, annex II, Procès-verbaux of the Hague Conferences, 1902, page 10, and maps here annexed I and II).¹

¹ Annexe A.

Si l'emplacement du point C n'est pas contesté, il est cependant utile de constater que l'adoption en 1904, comme ligne de démarcation, du cours de la Noël Meto plutôt que du cours de la Noël Boll Bass prouve l'intention générale de ramener la frontière vers l'ouest.

b) L'emplacement de la source de la Noël Meto a été déterminé et une borne y a été plantée d'un commun accord (procès-verbal du 14 juin 1909, 1^{er} Mémoire portugais, page 26). Toute cette partie du tracé est ainsi définitivement réglée. (Voir carte annexe VI.)¹

c) Où est maintenant, à l'autre extrémité de la ligne, le point A convenu à la Conférence de 1902? Les Pays-Bas soutiennent que ce point A se trouve là où se termina la reconnaissance de 1899 et où les commissaires durent arrêter leurs travaux à cause d'hostilité entre les tribus indigènes, c'est-à-dire au point où les commissaires après avoir suivi la Nono Balena, la Nono Nive et la Noël Bilomi, ont atteint le confluent de cette dernière rivière avec une autre venant du nord et à laquelle avait été attribué d'un commun accord le nom d'Oè Sunan.

Toute la ligne de démarcation dans cette partie occidentale et inférieure du bassin de la Bilomi a été sanctionnée et définitivement admise comme frontière par le traité de 1904, article 3, chiffre 9. Lors de la reconnaissance postérieure du 17 juin 1909, il est constaté au procès-verbal que ce point n'est pas douteux: „ On décide „ *unanimentement* que de ce point, *c'est-à-dire le point où la commission „ de 1889 a terminé son travail*, l'arpentage sera poursuivi.” (1^{er} Mémoire néerlandais, annexe III, page 4, 1^{er} Mémoire portugais, page 27.) La divergence se produit seulement sur ce qu'il y a lieu de faire à *partir de ce point*, soit vers le nord (demande néerlandaise) soit dans la direction de l'est (demande portugaise). Or ce point, celui auquel les travaux avaient été suspendus en 1899, celui à partir duquel des divergences s'étaient produites entre 1899 et 1902, a été marqué sur la carte officielle signée contradictoirement par les commissaires délimitateurs des deux Pays le 16 février 1899; c'est ce même point qui a été envisagé lorsqu'à la Conférence de La Haye de 1902, les délégués des deux États ont solutionné le différend en se prononçant pour une frontière se dirigeant vers le

¹ Annexe C.

If the location of point C is not disputed, it is nevertheless useful to state that the adoption in 1904 as a boundary line, of the course of the Noël Meto rather than the course of the Noël Boll Bass, proves the general intention of restoring the frontier toward the west.

b) The location of the source of the Noël Meto was determined and a bound set there by common agreement (procès-verbal of June 14, 1909, first Portuguese Case, page 26). All that part of the survey is thus definitely settled (see map annex VI).¹

c) Where now, at the other end of the line, is point A acknowledged in the Conference of 1902? The Netherlands maintain this point A is where the survey of 1899 ended and where the commissioners had to cease their work because of hostilities between the native tribes, that is to say at the point where the commissioners, after having followed the Nono Balena, the Nono Nive and the Noël Bilomi, had reached the confluence of this last river with another coming from the north and to which had been assigned by common accord the name of Oè Sunan.

All the boundary line in this western and lower part of the basin of the Bilomi was confirmed and definitely admitted as frontier by the treaty of 1904, article 3, number 9. At the time of the later examination of June 17, 1909, it is stated in the procès-verbal that this point is not doubtful: "It is decided *unanimously* that from this point, *that is to say, the point where the commission of 1899 stopped its work*, the survey shall be followed." (First Dutch Case, annex III, page 4, first Portuguese Case, page 27.) The disagreement arises only upon what is to be done *starting from this point*, whether toward the north (Dutch claim) or in the easterly direction (Portuguese claim). Now this point, at which the work was suspended in 1899, starting from which the differences arose between 1899 and 1902, was marked on the official signed map in a different manner by the boundary commissioners of the two nations February 16, 1899. It is this very point which was considered when, in the Conference at The Hague of 1902, the delegates of the two States settled the dispute by pronouncing in favor of a frontier extending toward the north and designated by the name of

¹ Annexe C.

nord et désignée sous le nom de ligne A C. En plaçant cette carte du 16 février 1899 (annexe IV ci-jointe) sous la carte annexée à la Convention de 1904 (annexe III ci-jointe), on constate qu'il y a concordance absolue entre elles quant à l'emplacement du point dont il s'agit.¹

Le Gouvernement portugais ne conteste d'ailleurs pas très vivement l'emplacement du point A, car dans son premier Mémoire il s'exprime comme suit, page 10 : „ On ne prétend pas nier que la „ ligne ne part du point A, auquel se rapportent les procès-verbaux „ des négociations, vers le point C. Ce qu'on discute, ce sont ses „ inflexions subordonnées . . . ” et plus loin, page 15 : „ On ne conteste „ pas que la frontière dont il s'agit ne parte du point où les arpen- „ teurs ont été empêchés d'aller plus loin ; ce qu'on nie, c'est „ qu'on ait eu l'intention de la diriger *de là* directement vers le nord.”

De ce qui précède, il résulte pour l'arbitre la certitude que trois points de la ligne A C sont dûment établis, incontestables et même incontestés : le point C au nord, la source de la Noël Meto au milieu et le point A au sud, à l'endroit où les travaux de délimitation ont été suspendus en 1899. Ces trois points correspondent certainement à l'intention des Parties lorsqu'elles ont négocié le projet de convention de 1902 et l'ont transformé en convention en 1904. Admettre une autre solution quant à l'emplacement du point A serait d'ailleurs remettre en question la frontière convenue pour le cours inférieur de la Noël Bilomi par le chiffre 9 de l'article 3 du traité de 1904 ; or ce chiffre 9 n'est pas contesté et n'est pas en cause.

3. Il reste à examiner maintenant la partie de la ligne A C comprise entre le point A au sud et la source de la Noël Meto au milieu de cette ligne AC.

Ici encore et toujours, il faut rechercher l'intention réelle et concordante des Parties au moment où elles ont contracté :

En 1902, deux propositions étaient en présence : Celle du Portugal avait été formulée comme suit dans le procès-verbal de la séance des commissaires délimitateurs tenue à Kœpang le 21 février 1899 (annexe II au 2^{me} Mémoire néerlandais) : „ De ce dernier point „ (le point A), le long de la Noël Bilomi jusqu'à Nunkalai, de là

¹ Annexe B.

line A C. In placing this map of February 16, 1899 (annex IV appended here) under the map annexed to the Convention of 1904 (annex III, appended here), it is established that there is absolute agreement between them as to the location of the point in question.¹

The Portuguese Government, moreover, does not contest very strongly the location of point A, for in its first case it expresses itself as follows, page 10: "There is no pretension to deny that the line runs from point A, to which the procès-verbaux of the negotiations refer, toward the point C. What is debated is the subordinate variations . . ." and farther on page 15: "There is no denial that the frontier in question starts from the point where the surveyors were prevented from going farther; what is denied is that they had the intention of running it north *from there*."

From what precedes, there results for the arbitrator certainty that three points of the line A C are duly established, incontestable, and not even contested: point C in the north, the source of the Noël Meto in the middle, and point A in the south, at the place where the boundary work was suspended in 1899. These three points certainly correspond to the intention of the Parties when they negotiated the project of the convention of 1902 and transformed it into a convention in 1904. To admit any other solution as to the location of point A, moreover, would again place in question the frontier agreed upon for the lower course of the Noël Bilomi by number 9 of article 3 of the treaty of 1904; now, number 9 is not contested and is not in litigation.

3. It now remains to examine the part of line A C comprised between point A in the south and the source of the Noël Meto in the middle of line A C.

Here again, and always, it is necessary to find out the real and harmonious intention of the Parties at the time when they bound themselves:

In 1902 two propositions were opposed: That of Portugal had been formulated as follows in the procès-verbal of the session of the boundary commissioners held at Kœpang February 21, 1899 (annex II in the second Dutch Case): "From this last point (point A), along the Noël Bilomi as far as Nunkalai, from there crossing

¹ Annexe B. The point where the western line strikes the Noël Bilomi.

„traversant Tasona, Kin Napua, Humusu, jusqu'à la source de la „Noël Boll Bass; puis le long de cette rivière jusqu'à l'embouchure." Aux Conférences de La Haye de 1902, ce tracé (D B) fut abandonné dès la séance du 26 juin par la Délégation portugaise et remplacé par la demande d'un tracé intermédiaire et diagonal A B qui prenait pour frontière au nord-est le cours de la Noël Boll Bass au lieu de la Noël Meto (voir la carte ci-jointe II).¹ Le 28 juin, la délégation portugaise abandonnait cette ligne de retraite A B, reculait vers l'ouest de la Noël Boll Bass à la Noël Meto (voir carte ci-jointe II), et acceptait la ligne A C réclamée par les Pays-Bas. Cette ligne A C était aussitôt tracée sur une carte qui a été annexée officiellement au traité de 1904 (voir carte annexe III).²

Sur cette carte, la frontière, partant du point A auquel aboutissait la frontière incontestée du cours inférieur de la Noël Bilomi, remonte dans la direction du nord le cours d'un petit affluent appelé d'un commun accord Oè Sunan, puis continue vers le nord jusqu'à l'emplacement, alors inconnu, de la source de la Noël Meto. Ce tracé de la carte était défini et commenté comme suit dans le traité, art. 3, chiffre 10: „à partir de ce point (A), la limite suit „le thalweg de l'Oè Sunan, traverse autant que possible Nipani „et Kelali (Keli), gagne la source de la Noël Meto et suit le thalweg „de cette rivière jusqu'à son embouchure." Or ce texte, devenu définitif dans le traité de 1904, *est la reproduction mot à mot du texte proposé par les commissaires néerlandais* à cette même séance de Koepang, 21 février 1899, en opposition aux prétentions portugaise d'alors. La simple mise en regard de ces deux cartes et le fait qu'en 1902-1904, la proposition portugaise a été totalement écartée et la proposition néerlandaise insérée mot à mot, suffit à établir avec évidence l'intention des Parties contractantes: lorsqu'elles ont négocié et signé l'accord de 1904, elles ont adopté le tracé néerlandais et écarté le tracé désiré par le Portugal sur cette partie des frontières des deux États dans l'île de Timor. Les deux parties ont donc eu, dans la pensée de l'arbitre, *la volonté réelle et concordante*

¹ Annexe A.

² Annexe B.

Tasona, Kin Napua, Humusu, as far as the source of the Noèl Boll Bass; then along that river as far as its mouth." At the Conferences of The Hague of 1902, this survey (D B) was abandoned from the session of June 26 by the Portuguese Delegation and replaced by the demand for an intermediate and diagonal survey A B, which would have as a frontier in the northwest the course of the Noèl Boll Bass instead of the Noèl Meto (see map II here appended).¹ On the 28th of June the Portuguese Delegation abandoned this line of retreat A B, moved back westerly from the Noèl Boll Bass to the Noèl Meto, and accepted line A C claimed by the Netherlands. This line A C was immediately drawn on a map which was officially annexed to the treaty of 1904 (see map annex III).²

On this map, the frontier, starting from point A where the undisputed frontier of the lower course of the Noèl Bilomi ends, ascends in a northerly direction the course of a small affluent called, by common agreement, Oè Sunan, then continues northerly as far as the location, then not known, of the source of the Noèl Meto. This survey on the map was defined and explained as follows in the treaty, art. 3, number 10: "starting from this point (A) the boundary follows the thalweg of the Oè Sunan, crosses as far as possible Nipani and Kelali (Keli), reaches the source of the Noèl Meto and follows the thalweg of that river as far as its mouth." Now this clause, made definitive in the treaty of 1904, *is the repetition word for word of the clause proposed by the Dutch commissioners* at that same session at Koepang, February 21, 1899, in opposition to the Portuguese pretensions at that time. The simple taking into consideration of these two maps and the fact that in 1902-1904 the Portuguese proposal was totally disregarded and the Dutch proposal inserted word for word, suffices to establish with evidence the intention of the contracting Parties: when they negotiated and signed the agreement of 1904 they adopted the Dutch survey and disregarded the survey desired by Portugal on that part of the frontier of the two states in the island of Timor. The two Parties had then, in the opinion of the arbitrator, *a real and harmonious*

¹ Annexe A.

² The line extending south from the mouth of the Noèl Meto, Annexe B.

d'adopter le tracé le plus occidental, non seulement sur le versant nord de l'île entre la Noël Boll Bass et la Noël Meto, mais aussi dans le centre de l'île, entre le cours de la Noël Bilomi et la source de la Noël Meto.

Il convient maintenant d'entrer dans les détails de l'examen de ce tracé le plus occidental :

4. Le Portugal fait observer aujourd'hui que le cours d'eau dénommé Oè Sunan sur les cartes officielles de 1899 et de 1904 et dans l'art. 3, chiffre 9, du traité de 1904, n'existe pas ; que ce cours d'eau porte en réalité le nom de Kabun chez les membres de la tribu des Tumbabas ou de Lèos chez les membres de la tribu des Ambenos, et que le véritable Oé Sunan se trouve à six ou sept kilomètres plus à l'est. Il est vrai, ajoute le Gouvernement portugais, que cet autre Oè Sunan n'est pas un affluent de la rivière Bilomi, qu'il prend sa source à une certaine distance de cette rivière, sur le versant nord du Mont Kinapua, mais cet autre Oè Sunan et le Mont Kinapua sont revendiqués par les Ambenos (portugais) comme formant d'ancienne date la frontière entre eux à l'ouest et les Amakonos néerlandais à l'est. C'est donc bien, dans la pensée du Gouvernement portugais, à cet autre Oè Sunan que les deux Gouvernements ont pensé lorsqu'ils ont, à l'art. 3, chiffre 10, du traité de 1904, stipulé que la frontière suivrait le cours de l'Oè Sunan.

Pour apprécier la portée de cette allégation, il y a lieu de se rappeler que, sur la carte dressée par les commissaires délimitateurs des deux Pays le 16 février 1899 à Kœpang (carte annexe IV),¹ la frontière demandée alors par le Portugal est indiquée par un pointillé *en suivant à la montée le cours présumé de la Noël Bilomi* dans la direction de l'est à partir du point (A) auquel les dits commissaires avaient dû alors arrêter leurs travaux, c'est-à-dire à partir du confluent de la Noël Bilomi avec ce qu'on appelait alors d'un commun accord l'Oè Sunan ; on a eu soin, dans cette carte de 1899, de faire suivre le pointillé des mots „ Noël Bilomi, ” pour bien indiquer le désir des commissaires portugais de continuer à suivre, en le remontant, le cours de la rivière.

D'autre part, lors de la signature du traité de 1904, on a, au con-

¹ Annexe B.

wish to adopt the most western survey, not only on the northern slope of the island between the Noël Boll Bass and the Noël Meto, but also in the center of the island, between the course of the Noël Bilomi and the source of the Noël Meto.

It is now fitting to enter into the details of the examination of the most western survey :

4. Portugal observes to-day that the water-course named Oè Sunan on the official maps of 1899 and of 1904, and in art. 3, number 9 of the treaty of 1904, does not exist ; that this water-course really bears the name of Kabun among the members of the tribe of the Tumbaba, or of Lèos among the members of the tribe of Ambeno, and that the true Oè Sunan is six or seven kilometers farther to the east. It is true, the Portuguese Government adds, that this other Oè Sunan is not an affluent of the river Bilomi, that it takes its source at a certain distance from that river, on the north slope of Mount Kinapua, but this other Oè Sunan and Mount Kinapua are claimed by the Ambenos (Portuguese) as forming from early date the frontier between them on the west and the Dutch Amakonos on the east. It is then indeed, in the opinion of the Portuguese Government, of this other Oè Sunan that the two Governments thought when, in article 3, number 10, of the treaty of 1904 they stipulated that the frontier would follow the course of the Oè Sunan.

To understand the bearing of this allegation there is reason to recollect that, on the map prepared by the boundary commissioners of the two countries at Kœpang February 16, 1899 (map annex IV),¹ the frontier then demanded by Portugal is indicated by a dotted line *following upstream the presumed course of the Noël Bilomi* in an easterly direction starting from the point (A) where the said commissioners were obliged then to stop their work, that is to say, starting from the confluence of the Noël Bilomi with what then by common agreement was called the Oè Sunan ; care was taken in the map of 1899 to have the words "Noël Bilomi" follow the dotted line so as to indicate certainly the desire of the Portuguese commissioners to continue to follow, in going up, the course of the river.

On the other side, at the time of the signature of the treaty of

¹ Annexe B.

traire, sur la carte annexée au traité, supprimé tout ce pointillé à l'est du point auquel on s'était arrêté en 1899, pour bien montrer qu'il n'y avait plus lieu de continuer à remonter dans la direction de l'est le cours alors inexploré de la Noël Bilomi, et qu'au contraire, la frontière devait se diriger vers le nord (voir carte transparente annexe III).¹ Cela implique, dans la pensée de l'arbitre, l'intention concordante d'attribuer, en amont du point A, les *deux rives* de la Noël Bilomi aux Pays-Bas.

Un autre fait qui paraît à l'arbitre impliquer la même intention concordante des Parties lors de la signature de la Convention de 1904, est que, dans la description de la frontière proposée en 1899 par les commissaires portugais, ils ont suggéré de *l'ouest à l'est* le tracé suivant : „ De ce dernier point (le confluent de la Noël Bilomi „ avec l'affluent nommé alors l'Oè Sunan) le long de la Noël Bilomi „ jusqu'à Nunkalaï, de là traversant Tasona, Kinapua . . . ” ; d'après cette description portugaise, Nunkalaï se trouve donc à l'est de la rivière d'Oè Sunan et à l'ouest de Kinapua. Or l'autre rivière Oè-Sunan, actuellement revendiquée comme frontière par le Portugal, se trouve située à plusieurs kilomètres *à l'est* et non à l'ouest de Nunkalaï, d'où résulte l'impossibilité que cette rivière ait été visée par les délégués portugais dans leurs propositions d'alors.

Ce qui confirme encore cette impression de l'arbitre, c'est le fait que le nouvel Oè Sunan, celui qui, six kilomètres plus à l'est, a sa source sur le versant septentrional du mont Kinapua, n'est pas un *affluent* de la Noël Bilomi.

Enfin, cet autre Oè Sunan ne se dirige pas „ vers Nipani et Kelali „ (Keli) ” comme le prescrit le traité de 1904, mais se confond très vite avec d'autres rivières se dirigeant vers l'est pour aboutir finalement dans des régions incontestablement néerlandaises.

Tout cet ensemble de circonstances concordantes amène l'arbitre à la conviction qu'il n'y a pas lieu de s'arrêter à l'erreur de nom commise par les commissaires délimitateurs en 1899 et par les négociateurs des actes internationaux de 1902 et 1904 lorsqu'ils ont donné au Kabun ou Lèos le nom d'Oè Sunan, et qu'il y a lieu au contraire

¹ Annexe B.

1904, on the contrary, on the map annexed to the treaty, all of the dotted line east of the point where a stop was made in 1899 was omitted, to show clearly that there was no longer reason to ascend in an easterly direction the then unexplored course of the Noël Bilomi, and that on the contrary the frontier should incline toward the north (See transparent map annex III).¹ This implies, in the opinion of the arbitrator, harmonious intention to grant, from point A upstream, *both banks* of the Noël Bilomi to the Netherlands.

Another fact which seems to the arbitrator to imply the same harmonious intention of the parties at the time of the signature of the Convention of 1904, is that, in the description of the frontier proposed in 1899 by the Portuguese commissioners, they suggested from *west to east* the following survey: "From this last point (the confluence of the Noël Bilomi with the affluent at that time called Oè Sunan) along the Noël Bilomi *as far as Nunkalai*, thence crossing Tasona, Kinapua . . .;" according to this Portuguese description Nunkalai is east of the river Oè Sunan and west of Kinapua. Now, the other river Oè Sunan, now claimed as a frontier by Portugal, is situated several kilometers *east*, and not west, of Nunkalai, from which results the impossibility that this river had been considered by the Portuguese delegates in their proposals at that time.

That which further confirms this impression of the arbitrator is the fact that the new Oè Sunan, this one which, six kilometers farther to the east, has its source on the northern slope of Mount Kinapua, is not *an affluent* of the Noël Bilomi.

Finally, this other Oè Sunan does not flow "toward Nipani and Kelali (Keli)" as the treaty of 1904 requires it, but is very quickly confused with other rivers flowing toward the east and finally ends in regions unquestionably Dutch.

All this array of harmonious circumstances leads the arbitrator to the conviction that there is no reason to dwell on the mistake of name made by the boundary commissioners in 1899 and by the negotiators of the international acts of 1902 and 1904 when they gave to Kabun or Lèos the name of Oè Sunan, and that there is

¹ Annexe B, line running north from A.

d'admettre que c'est bien le Kabun ou Lèos que les Parties ont eu l'intention de viser comme devant servir de frontière à partir du point A dans la direction du nord. Cette erreur commune aux commissaires des deux Pays s'explique d'ailleurs lorsqu'on constate que la plupart des cours d'eau de la région portent plusieurs noms ou portent le nom de la région qu'ils traversent et qu'une région voisine du Kabun ou Lèos porte le nom de Sunan dont la consonance se rapproche d'Oè Sunan.

Admettre une autre solution, accepter un tracé remontant le cours de la Noël Bilomi jusqu'au mont Kinapua, puis passant dans le bassin d'un autre Oè Sunan que n'est pas un affluent de la Bilomi et qui ne se dirige pas vers Nipani et Kelali, serait contraire à tout l'esprit de la négociation de 1902-1904, et inconciliable avec la carte annexée à la convention de 1904. Le Portugal ne saurait équitablement revendiquer après coup, entre la Noël Bilomi et la source de la Noël Meto et à propos d'un bornage, presque exactement le territoire auquel il a expressément renoncé en 1902-1904 contre des compensations jugées par lui suffisantes ou parce qu'il a voulu éviter alors de la part des Pays-Bas un appel à l'arbitrage ou des revendications plus étendues dans la région d'Okussi (voir cartes annexes V et VI).¹

De ce qui précède, se dégage, en d'autres termes, la conviction que la volonté des Parties contractantes doit être interprétée en ce sens qu'à partir du point A situé sur la rivière Bilomi, la frontière suit, dans la direction du nord, le thalweg de la rivière Kabun ou Lèos jusqu'à la source de ce dernier cours d'eau dénommé à tort Oè Sunan en 1899, 1902 et 1904.

Le raisonnement exposé ci-dessus sous chiffre 4 serait superflu si, comme l'affirme le Gouvernement des Pays-Bas (second mémoire, chiffre VII, page 6) les dernières reconnaissances faites sur place ont établi que ce nouvel Oè Sunan n'existe pas et que le cours d'eau auquel des portugais donnent ce nom s'appelle en réalité Noël Polan ou Poëamesse.

5. Il ne reste plus à rechercher l'intention des Parties que pour la section comprise entre la source de la rivière Kabun ou Lèos

¹ Annexe C.

reason on the contrary to admit that it is this very Kabun or Lèos that the Parties intended to consider as before serving as a frontier from point A north. This mutual error of the commissioners of both nations is explained, moreover, when one states that most of the water-courses of the region bear several names or bear the name of the region which they cross and that a region near to Kabun or Lèos has the name Sunan, the sound of which resembles that of Oè Sunan.

To admit any other solution, to accept a survey following up the course of the Noël Bilomi as far as Mount Kinapua, then passing into the basin of another Oè Sunan which is not an affluent of the Bilomi, and which does not flow toward Nipani and Kelali, would be contrary to the whole spirit of the negotiation of 1902-1904, and irreconcilable with the map annexed to the Convention of 1904. Portugal could not afterwards equitably claim, between the Noël Bilomi and the source of the Noël Meto and in regard to setting of bounds, almost exactly the territory which it expressly renounced in 1902-1904 for compensations deemed sufficient by her or because she wished to avoid then an appeal on the part of the Netherlands to arbitration or more extensive claims in the Oikussi region (see maps annexed V and VI).¹

From what has gone before, there evolves, in other words, the conviction that the will of the contracting Parties ought to be interpreted in the sense that, starting from point A situated on the Bilomi river, the frontier follows in a northerly direction the thalweg of the river Kabun or Lèos as far as the source of this last water course wrongly called Oè Sunan in 1899, 1902 and 1904.

The reasoning set forth above under number 4 would be superfluous if, as the Government of the Netherlands affirms (second case, number VII, page 6), the last reconnaissances made on the ground established that this new Oè Sunan does not exist and that the water course to which the Portuguese gave this name is in reality called Noël Polan or Poamesse.

5. It remains still to seek the intention of the Parties as to that region included between the source of the river Kabun or Lèos

¹ Annexe C.

(dénommée à tort Oè Sunan de 1899 à 1904) et la source de la Noël Meto.

La Convention de 1904 s'exprime comme suit : „ Le Thalweg de „ l'Oè Sunan [reconnu sous N° 4 ci-devant devoir être dénommé „ Kabun ou Lèos] traverse *autant que possible* Nipani et Kelali „ (Keli), [et] gagne la source de la Noël Meto . . . ”

Les commissaires délimitateurs néerlandais et leur Gouvernement proposent de relier les sources des rivières Kabun et Noël Meto en suivant presque exactement la ligne de partage des eaux, c'est-à-dire une suite de sommets dont les principaux porteraient, du sud au nord, les noms de Netton, Adjause, Niseu ou Nisene, Wanat ou Vanate, Fatu Nipani ou Fatoe Nipani, Fatu Kabi (Fatoe Kabi) et Kelali (Keli).

Cette proposition est contestée par le Gouvernement portugais parce qu'elle serait contraire aux intentions des Parties dont le but aurait été, lors de la conclusion des traités entre les deux Gouvernements, de ne pas séparer les États indigènes ; or cette ligne détacherait de l'Ambeno portugais toute la partie orientale ; le Gouvernement portugais invoque, dans son premier et surtout dans les annexes de son second Mémoire, les dépositions de nombreux chefs indigènes pour établir, en substance, que tout l'espace qui serait attribué aux Pays-Bas fait partie de l'Ambeno et appartient aux Ambenos. Il invoque en outre une carte privée éditée à Batavia, sur laquelle les Ambenos sont indiqués comme occupant le territoire revendiqué par les Pays-Bas. Le Gouvernement portugais est d'avis que l'Ambenu-Oikussi a incontestablement été attribué au Portugal par le traité de 1859 et que la tribu des Ambenos ne saurait être partagée entre deux souverainetés.

Une fois de plus, l'arbitre doit chercher à reconstituer la volonté des Parties. Or d'après le texte du traité de 1859, le Portugal a obtenu seulement la „ partie ” de l'État d'Ambeno qui „ a arboré „ le pavillon portugais ” ; il n'y aurait donc rien d'anormal à ce que certaines parties de l'Ambeno eussent été considérées, dès 1859, comme restant sous la souveraineté des Pays-Bas. En outre, la carte privée éditée à Batavia ne saurait prévaloir contre les deux cartes officielles signées par les commissaires ou délégués des deux États en 1899 et en 1904 et ces deux cartes officielles (annexes III

(wrongly called Oè Sunan in 1899-1904) and the source of the Noël Meto.

The Convention of 1904 sets it forth as follows: "The Thalweg of the Oè Sunan (recognized under number 4 above ought to be called Kabun or Lèos) crosses Nipani and Kelali (Keli) *as much as possible*, (and) reaches the source of the Noël Meto . . ."

The Dutch boundary commissioners and their Government propose to connect the sources of the Kabun and Noël Meto rivers by following almost exactly the line dividing the streams, that is to say, a series of peaks of which the principal ones, from north to south, would bear the names of Netton, Adjause, Niseu or Nisene, Wanat or Vanate, Fatu Nipani or Fatoe Nipani, Fatu Kabi (Fatoe Kabi) and Kelali (Keli).

This proposition is opposed by the Portuguese Government because it would be contrary to the intention of the Parties, whose aim was, at the time of the conclusion of the treaties between the two Governments, not to divide the native States; now, that line would detach from Portuguese Ambeno the whole eastern part; the Portuguese Government brings forward, in its first Case, and especially in the annexes to the second, the depositions of numerous native chieftains to prove, in substance, that the whole area which would be attributed to the Netherlands forms a part of Ambeno and belongs to the Ambenos. They produce, moreover, a private map edited at Batavia, on which the Ambenos are shown as occupying the territory claimed by the Netherlands. The Portuguese Government is of the opinion that Ambenu-Oïkussi was granted incontestably to Portugal by the treaty of 1859, and that the tribe of Ambenos should not be partitioned between two sovereignties.

Again, moreover, the arbitrator must seek to reconstruct the will of the Parties. Now, according to the text of the treaty of 1859, Portugal obtained only the "part" of the State of Ambeno which "has raised the Portuguese flag"; there would then be nothing anomalous in that certain parts of Ambeno should have been considered, since 1859, as remaining under the sovereignty of the Netherlands. Further, the private map edited at Batavia could not outweigh the two official maps signed by the commissioners or delegates of the two States in 1899 and in 1904, and on these two

et IV)¹ ne font pas figurer le nom d'Ambeno dans le territoire contesté; l'une et l'autre inscrivent ce nom à l'ouest et en dehors du territoire contesté. Il résulte, d'ailleurs, des documents fournis que, dès 1899, les commissaires néerlandais produisaient des déclarations des chefs indigènes tumbabas et amakonos assurant que ce territoire leur appartenait et ne faisait pas partie de l'Ambeno (annexe III au second Mémoire néerlandais, déclaration faite à la séance tenue à Kœpang le 21 février 1899). On se trouve donc en présence d'affirmations contradictoires des indigènes. Ceux-ci se battaient en 1899 depuis plus de vingt ans (premier Mémoire portugais, p. 22), lors de l'arrivée dans cette région des commissaires-délimitateurs, et le Gouvernement portugais reconnaît (dans son premier Mémoire, p. 9) comme „ certain que les peuples à „ l'Est de l'Oikussi Ambeno se disputent depuis longtemps les „ territoires contigus et que ces peuples se trouvent de telle sorte „ entremêlés, qu'il est difficile de distinguer ce qui leur appartient „ en réalité.” Voir aussi dans le second Mémoire portugais, p. 10, la déposition du chef ambeno Béne Necat : „ La partie orientale „ d'Oikussi et d'Ambeno a été habitée par le peuple Tumbaba qui „ en a été chassé il y a trois génération . . . par les Ambenos „ . . . Depuis lors cette région est déserte, bien qu'elle soit par- „ courue par les Tumbabas et par les Ambenos.”

L'intention des Parties lors de la négociation de 1902 se trouve documentée par le procès-verbal de la séance du 26 juin (procès-verbaux, page 7) au cours de laquelle le premier délégué portugais a, lui-même, conseillé „ de ne pas trop se laisser guider en cette „ matière par les préoccupations d'humanité envers les peuples dans „ l'île de Timor; pour des causes peu graves, ces tribus quittent „ leur sol natal pour s'établir ailleurs et ont plusieurs fois quitté „ le territoire néerlandais pour s'établir dans le territoire portugais „ et inversement.” Le lendemain, procès-verbaux, page 11, le premier délégué néerlandais faisait observer que son Gouvernement faisait „ une grande concession” en ne réclamant pas la totalité de l'Ambeno, „ attendu qu'à son avis la convention de 1893 impli-

¹ Annexe B.

official maps (annex III and IV)¹ the name of Ambeno does not appear within the disputed territory; both show that name west and outside of the disputed territory. It results, moreover, from the documents offered that, since 1899, the Dutch commissioners produced declarations of the native Tumbaba and Amakano chieftains affirming that this territory belonged to them and did not form a part of Ambeno (annex III in the second Dutch Case, declaration made at the session held at Koepang, February 21, 1899). One is then face to face with contradictory assertions of natives. The latter in 1899 had been fighting for more than twenty years (first Portuguese Case, page 22) at the time of the arrival of the boundary commissioners in that region, and the Portuguese Government acknowledged (in its first Case, page 9) as "certain that the peoples east of Oikussi Ambeno have contested for a long time the contiguous territories and that these peoples are to such a degree intermingled that it is difficult to distinguish what really does belong to them." See also in the second Portuguese Case, page 10, the deposition of the native Ambeno chieftain, Béne Necat: "The eastern part of Oikussi and of Ambeno was inhabited by the Tumbaba people who were driven away three generations ago . . . by the Ambenos . . . Since then that region has been unoccupied, although it has been traveled over by both Tumbabas and Ambenos."

The intention of the Parties at the time of the negotiation of 1902 is found stated in the procès-verbal of the session of June 26 (procès-verbaux, page 7) during the course of which the first Portuguese Delegate himself had advised "against allowing one's self to be guided too much in this business by humanitarian motives toward the peoples of the island of Timor; for on account of causes of little importance these tribes leave their native soil to set up elsewhere, and several times they have left Dutch territory to establish themselves in Portuguese territory, and vice versa." The next day, procès-verbaux, page 11, the first Dutch Delegate observed that his Government was making "a great concession" in not claiming the whole of Ambeno," considering that according to his opinion the Convention of 1893 implied the "disappearance of the

¹ Annexe B.

„ quait la disparition de l'enclave d'Oikussi” ; il déclarait que, si les deux Gouvernements ne pouvaient en venir à un arrangement sur la base de la ligne A C proposée par les Pays-Bas, ceux-ci se verraient engagés à recourir à l'arbitrage pour établir si l'Ambeno n'était pas une „ enclave” devant leur être attribuée toute entière, et c'est alors que, le 28 juin, la délégation portugaise accepta sans restriction ni réserve la ligne A C telle qu'elle était réclamée par la délégation néerlandaise.

De tout cet ensemble de faits résulte pour l'arbitre la conviction qu'en 1902-1904, l'accord s'est fait sans tenir compte du risque de détacher telle ou telle parcelle réclamée par les Ambenos, les Tumbabas ou les Amakonos et en constatant expressément qu'on ne se préoccuperait pas des prétentions, d'ailleurs contradictoires, des indigènes. Des procès-verbaux de 1902 résulte, en d'autres termes, pour l'arbitre, la conviction que le Portugal a accepté la ligne A C telle qu'elle était réclamée *par les Pays-Bas*, précisément parce que le Portugal préférait abandonner des prétentions d'ordre secondaire à l'est afin de conserver le gros morceau, c'est-à-dire afin de conserver ce que le traité de 1859 avait appelé l'„ enclave” d'Ambeno-Okussi. C'est avec raison aussi, dans la pensée de l'arbitre, que le Gouvernement néerlandais soutient dans son second mémoire, page 2, que rien dans le traité de 1859 ne s'opposait à la division du royaume d'Ambeno et ajoute : „ Même si le traité „ de 1859 n'avait pas sanctionné une telle division . . . le Gouverne- „ ment portugais ne pourrait légitimement s'opposer *à présent* à „ une pareille division. De telles objections viendraient trop tard „ et auraient dû être élevées *avant* la conclusion du traité de 1904.”

L'arbitre fait observer en outre que, sur les deux cartes officielles de 1899 et de 1904 (annexes III et IV),¹ le Nipani est indiqué comme se trouvant très près et légèrement à l'est de la ligne A C, à peu de distance de la source de l'Oè Sunan (aujourd'hui reconnu devoir être appelé Kabun ou Lèos) ; si l'on adoptait le tracé actuellement réclamé par le Portugal, ce tracé passerait fort loin à l'est et au nord du Nipani et par conséquent „ traverserait” encore moins ce territoire que le tracé proposé par les Pays-Bas. Il est vrai que le Gouvernement portugais place le Nipani (voir la carte annexée sous

¹ Annexe B.

enclave of Oikussi"; he declared that, if the two Governments were not able to come to an arrangement on the basis of the line A C proposed by the Netherlands, the latter would bind itself to have recourse to arbitration to determine whether Ambeno was an "enclave" which should be granted wholly to it, and thereupon, June 28, the Portuguese delegation accepted without restriction or reservation the line A C as it was claimed by the Dutch delegation.

From all this array of facts results for the arbitrator the conviction that in 1902-1904, an agreement was reached without taking into account the possibility of detaching one or another strip claimed by the Ambenos, the Tumbabas, or the Amakonos, and expressly stating that there would be no trouble concerning the claims, elsewhere conflicting, of the natives. From the procès-verbaux of 1902 there results in other words, for the arbitrator, the conviction that Portugal accepted the line A C as it was claimed by the Netherlands, precisely because Portugal preferred to abandon claims of a secondary order to the east, in order to retain the large strip, that is to say, in order to retain what the treaty of 1859 calls the "enclave" of Ambeno-Okussi. It is also with reason, in the opinion of the arbitrator, that the government of the Netherlands maintains in its second Case, page 2, that nothing in the treaty of 1859 prevented the division of the realm of Ambeno, and adds: "Even if the treaty of 1859 had not sanctioned such a division . . . the Portuguese Government legitimately could not oppose *at present* such a division. Such objections would come too late, and ought to have been raised *before* the conclusion of the treaty of 1904."

The arbitrator observes, moreover, on the two official maps of 1899 and of 1904 (annexes III and IV) ¹ Nipani is indicated as being very close and slightly to the east of line A C, a short distance from the source of the Oè Sunan (to-day admittedly should be called Kabun or Lèos); if the survey now claimed by Portugal were adopted, that survey would pass very far to the east and to the north of Nipani, and consequently "would cross" that territory still less than the survey proposed by the Netherlands. It is true that the Portuguese Government locates Nipani (see the map

¹ Annexe B.

chiffre VI au premier Mémoire néerlandais et mot *Nipani* inscrit en bleu sur la carte ci-jointe annexe IV)¹ au nord-est du territoire contesté, mais cette carte unilatérale portugaise ne saurait être opposée aux deux cartes officielles de 1899 et de 1904, (annexes III et IV)¹ signées des délégués des deux États; d'ailleurs, même sur cette carte exclusivement portugaise, la frontière désirée par le Portugal semble tracée au nord de Nipani et ne paraît pas „traverser” ce territoire.

6. Le Gouvernement de la République portugaise objecte enfin à ce tracé d'une ligne à peu près directe du sud au nord entre la source de la rivière Kabun ou Lèos et la source de la Noël Meto, que c'est une frontière terrestre, devant nécessiter la pose de bornes tandis que la ligne orientale suggérée par le Portugal est essentiellement formée par une succession de rivières, ce qui est préférable pour éviter des conflits entre les indigènes. Dans la pensée de l'arbitre, cette objection ne repose sur aucune indication résultant des négociations de 1899 à 1904. Sur la frontière méridionale de l'Okussi-Ambeno, la frontière adoptée en 1904 est, sur un assez grand nombre de points, indépendante des cours d'eau et a dû ou pourra devoir être marquée sur le terrain par des bornes. Le tracé suggéré par le Portugal comporterait, lui aussi, des parties terrestres et la plantation de bornes, notamment à l'angle sud-est, (aux environs du mont Kinapua, entre le cours de la rivière Bilomi et le cours de la rivière dénommée Oè Sunan par les Portugais,) et à l'angle nord-ouest, (entre la source de la rivière appelée par les Portugais Ni-Fullan et la source de la Noël Meto).²

Le tracé suggéré par les commissaires néerlandais paraît à l'arbitre constituer une frontière suffisamment naturelle pour être facilement délimitable sur le terrain. Il se compose d'une série continue de sommets assez élevés, portant, du sud au nord, les noms de Netton, Loamitoe, Adjausene, Niseu, Wanat, Fatoe-Nipani, Kelali ou Keli, dont l'altitude est indiquée entre 500 et 1000 mètres. Cette chaîne sert de ligne de partage des eaux et les rivières à l'est de cette ligne coulent vers l'orient. Il ne semble donc pas qu'il

¹ Annexe B.

² Annexe C.

annexed under number VI of the first Dutch Case and the word *Nipani* written *in blue* on the map here appended, annex IV)¹ north-west of the disputed territory, but this unilateral Portuguese map could not weigh against the two official maps of 1899 and of 1904, (annexes III and IV)² signed by the delegates of the two states; moreover, even on this exclusively Portuguese map, the frontier desired by Portugal seems surveyed to the north of Nipani and does not appear to "cross" that territory.

6. The Government of the Portuguese Republic objects finally to this laying out of a line almost directly from north to south between the source of the river Kabun or Lèos and the source of the Noël Meto, since it is a land frontier, necessitating the placing of bounds, while the eastern line suggested by Portugal is formed mainly by a succession of streams, which is preferable in order to avoid conflicts among the natives. In the opinion of the arbitrator, this objection rests on no information resulting from the negotiations from 1899 to 1904. On the southern frontier of the Okussi-Ambeno, the frontier adopted in 1904, at a somewhat large number of points, is independent of water courses and ought to have been or should be marked on the ground by bounds. The layout suggested by Portugal would, itself also, admit of parts on land and the setting of bounds, notably at the south-east angle, (in the vicinity of Mount Kinapua, between the course of the river Bilomi and the river called Oè Sunan by the Portuguese), and at the north-east angle (between the source of the river called by the Portuguese Ni Fullan and the source of the Noël Meto).³

The layout suggested by the Dutch boundary commissioners would appear to the arbitrator to constitute a frontier sufficiently natural easily to be bounded on land. It consists of a continuous series of rather high summits, from north to south, bearing the names of Netton, Loamitoe, Adjause, Niseu, Wanat, Fatoe-Nipani, Kelali or Keli, of which the altitude is indicated as between 500 and 1000 meters. This range serves as a line of division of the waters, and the rivers east of that line flow toward the east.

¹ Annexe B, here printed in black.

² Annexe B combines the maps of 1899 and 1904 in which the line A C coincided.

³ Annexe C.

soit techniquement difficile de procéder à la délimitation le long de cette chaîne de hauteurs, dont la direction générale répond entièrement à la ligne théorique A C adoptée d'un commun accord en 1904.

VII

CONCLUSIONS

Les considérations de fait et de droit qui précèdent ont amené l'arbitre aux conclusions suivantes :

1. Le traité de 1859 avait attribué au Portugal, dans la partie occidentale de l'île de Timor, l' „ enclave ” d'Oikussi-Ambenu, et les Pays-Bas ont cédé alors au Portugal „ *cette partie* d'Ambenu „ qui, depuis plusieurs années, a arboré le pavillon portugais.”

2. La Convention de 1893 a eu pour but „ d'établir d'une façon „ plus claire et plus exacte la démarcation ” des possessions respectives à Timor et d'y „ faire disparaître les enclaves actuellement „ existantes.”

3. La Convention de 1904 a régularisé la frontière au centre de l'île en attribuant au Portugal l'enclave néerlandaise de Maukatar et d'autres territoires contestés, et aux Pays-Bas au sud-ouest de l'île, l'enclave portugaise de Noemuti. D'autre part, les Pays-Bas ont renoncé, au cours des négociations de 1902, à soulever la grosse question de savoir si l'Oikussi Ambenu n'était pas, comme l'indiquait le traité de 1859, une „ enclave ” devant leur revenir. Cet accord a eu lieu à la condition, expressément acceptée par le Portugal, d'adopter, pour la frontière orientale de ce royaume d'Oikussi (Ambenu), la ligne A C réclamée au cours des négociations de 1902 par les Pays-Bas. Cette ligne A C a été consacrée par le traité de 1904 (voir Cartes annexes I et II).¹

4. Le point C de cette ligne n'est pas contesté ; il est situé sur la côte nord de l'île de Timor, à l'embouchure dans la mer de la Noël Meto, dont le cours a été substitué en 1902-1904 au cours de la rivière Noël Boll Bass, située plus à l'est et qu'avait réclamé le Portugal.

¹ Annexe A.

It does not seem then that it would be difficult technically to proceed to the boundary along that range of heights, of which the general direction corresponds entirely to the theoretical line A C adopted by common agreement in 1904.

VII

CONCLUSIONS

The considerations of fact and law which precede have led the arbitrator to the following conclusions:

1. The treaty of 1859 granted to Portugal, in the eastern part of the island of Timor, the "enclave" Oikussi-Ambenu, and the Netherlands at that time ceded to Portugal "*that part of Ambenu which, for several years, has hoisted the Portuguese flag.*"

2. The purpose of the Convention of 1893 was "to establish in the clearest and most exact fashion the boundary" of the respective possessions in Timor and there "to make the enclaves now existing to disappear."

3. The Convention of 1904 rectified the frontier in the center of the island by granting to Portugal the Dutch enclave of Maukatar and other disputed territory, and to the Netherlands in the southwestern part of the island, the Portuguese enclave of Noemuti. On the other hand, during the negotiations of 1902 the Netherlands gave up raising the larger question as to whether Oikussi Ambenu was not, as the treaty of 1859 indicated it, an "enclave" duly reverting to them. This agreement had taken place on the condition, expressly accepted by Portugal, of adopting, for the eastern frontier of the kingdom of Oikussi (Ambenu), the line A C claimed during the negotiations of 1902 by the Netherlands. This line A C was established by the treaty of 1904. (See map annexed I and II.)¹

4. Point C of this line is not disputed; it is located on the north coast of the island of Timor, at the widening into the sea of the Noël Meto, the course of which was substituted in 1902-1904 for the course of the Noël Boll Bass river, located farther east and which Portugal had claimed.

¹ Annexe A.

Le cours de la Noël Meto, dont le thalweg doit servir de frontière jusqu'à sa source, a été reconnu, n'est pas contesté, et une borne a été plantée contradictoirement à sa source.

5. Le point A, à l'extrémité méridionale de la ligne convenue en 1904, est le point auquel les travaux de délimitation ont été interrompus en 1899. Cela n'est pas sérieusement contesté par le Portugal, qui, à deux reprises dans son premier Mémoire, se sert des mots : „ On ne peut pas nier que la ligne part du point A, auquel se rapportent les procès-verbaux des négociations (p. 10). . . . On „ ne conteste pas que la frontière dont il s'agit ne parte du point „ où les arpenteurs de 1899 ont été empêchés d'aller plus loin ” (p. 15). Contester l'emplacement du point A serait remettre en question la délimitation du cours inférieur de la Noël Bilomi en aval de ce point ; or cette partie de la frontière a été réglée définitivement par le chiffre 9 de l'article 3 du traité de 1904 ; le point A a été d'ailleurs repéré contradictoirement sur les cartes officielles de 1899 et de 1904 (voir annexes III et IV).¹

6. Les négociateurs de 1902-1904 se sont trouvés à partir de ce point A en présence de deux propositions. L'une, la proposition portugaise, consistait à faire remonter à la frontière la rivière Noël Bilomi dans la direction de l'est jusqu'à Nunkalaï, puis à diriger la frontière vers le nord, par Humusu, afin d'atteindre la source de la rivière la Noël Boll Bass se jetant dans la mer à l'orient de la Noël Meto (ligne B D). L'autre, la proposition néerlandaise, dite ligne A C, consistait à se diriger vers le nord dès le point A jusqu'aux sources de la Noël Meto. Les négociateurs ont nettement, catégoriquement, répudié le premier tracé portugais pour accepter la seconde ligne A C réclamée par les Pays-Bas ; ils ont, sur la carte annexée au traité de 1904, attribué aux Pays-Bas *les deux rives* de la Noël Meto en amont du point A, auquel les délimitateurs avaient arrêté leurs travaux en 1899 (Voir les cartes III et IV).¹

7. La description dans le traité de 1904, article 3, chiffre 10, de cette ligne A C, la carte contradictoirement dessinée en 1899 et sur laquelle les négociateurs de 1902 ont délibéré, comme enfin la carte officiellement annexée au traité de 1904, mentionnent au point A, comme devant former limite dans la direction du nord, un

¹ Annexe B.

The course of the Noël Meto, of which the thalweg was to serve as frontier up to its source, was recognized, is not disputed, and a bound was located differently at its source.

5. Point A, at the southern end of the line agreed on in 1904, is the point at which work of delimitation was interrupted in 1899. This has not been seriously disputed by Portugal, who twice in the first Case uses the words: "It cannot be denied that the line starts from point A, to which the *procès-verbaux* of the negotiations refer (p. 10). . . . It is not disputed that the frontier concerning which there is question does not start from the point where the surveyors of 1899 were hindered from going any farther" (p. 15). To dispute the location of point A would again put in question the delimitation of the lower course of the Noël Bilomi downstream from that point; now, that part of the frontier was settled definitely by number 9 of article 3 of the treaty of 1904; besides, point A was marked differently on the official maps of 1899 and of 1904 (See annexes III and IV).¹

6. The negotiators of 1902-1904 found themselves starting from point A, confronted with two proposals. One, the Portuguese proposal, consisted in making the frontier go up the Noël Bilomi river in an easterly direction as far as Nunkalaï, then in carrying the frontier to the north, through Humusu, finally reaching the source of the Noël Boll Bass emptying into the sea east of the Noël Meto (line B D). The other, the Dutch proposal, said line A C, consisted in carrying it north from point A as far as the sources of the Noël Meto. The negotiators clearly, categorically repudiated the first Portuguese layout to accept the second line A C claimed by the Netherlands; they have, on the map annexed to the treaty of 1904, assigned to the Netherlands *both banks* of the Noël Meto upstream from point A, at which the boundary runners had stopped their work in 1899 (See maps III and IV).¹

7. The description of this line A C in the treaty of 1904, article 3, number 10, the map differently sketched in 1899 and on which the negotiators of 1902 deliberated, as finally the official map annexed to the treaty of 1904, mention at point A as properly forming a boundary in a northerly direction an affluent to which all Parties

¹ Annexe B.

affluent auquel toutes les Parties ont donné de 1899 à 1909 le nom d'Oè Sunan. Les Parties sont aujourd'hui d'accord que cet affluent porte en réalité le nom de Kabun ou de Lèos. Une autre rivière, découverte postérieurement à environ six kilomètres plus à l'est, porte, d'après les Portugais, le nom d'Oè Sunan et prend sa source au nord du Kinapua, montagne située très près de la rive nord de la Bilomi. L'existence de cette rivière Oè Sunan est contestée par les Pays-Bas dans leur second Mémoire à la suite de deux reconnaissances récentes; ce prétendu Oè Sunan s'appellerait en réalité Poeamesse ou Noël Polan.

Il est, dans la pensée de l'arbitre, impossible que cette autre rivière Oè Sunan, si elle existe, ait été celle que les négociateurs de 1899 et de 1902-1904 avaient en vue, car.

a) Elle n'est pas un affluent de la Noël Bilomi;

b) La frontière *proposée* à cette époque *par le Portugal* et *écartée* d'un commun accord en 1902-1904 devait, en partant du point A et en se dirigeant *vers l'est*, passer par *Nunkalai* puis par Kinapua; or Nunkalai est situé plusieurs kilomètres à l'*ouest* du mont Kinapua et à l'*ouest* de la source de cette nouvelle rivière dénommée Oè Sunan par les Portugais;

c) Les *deux* rives de la Noël Bilomi en amont et à l'est du point A ayant été attribuées aux Pays-Bas en 1904, l'affluent devant servir de frontière dans la direction du nord ne peut être recherché en amont et à l'est du point A.

Les principes généraux sur l'interprétation des Conventions exigent qu'on tienne compte „ de la réelle et commune intention des „ Parties sans s'arrêter aux expressions ou dénominations inexactes „ dont elles ont pu se servir par erreur.” Les Parties ont, il est vrai, commis une erreur en donnant le nom d'Oè Sunan à l'affluent venant du nord au point A, mais c'est cet affluent seul (dénommé alors par erreur Oè Sunan) qui était nécessairement, dans la pensée concordante des Parties, le point auquel la frontière devait quitter la Noël Bilomi pour se diriger vers le nord, — et non une autre rivière à laquelle les Portugais donnent ce nom d'Oè Sunan et qui serait située six kilomètres plus à l'est. En d'autres termes, c'est bien le thalweg de la rivière aujourd'hui dénommée Kabun ou Lèos qui doit servir de frontière à partir du point A dans la direction du nord.

gave the name of Oè Sunan from 1899 to 1909. To-day all Parties agree this affluent really bears the name of Kabun or Lèos. Another river subsequently discovered about six kilometers farther east bears, according to the Portuguese, the name of Oè Sunan, and takes its rise north of Kinapua, a mountain situated very near the north bank of the Bilomi. The existence of this stream Oè Sunan is disputed by the Netherlands, in their second Case, in consequence of two recent reconnaissances: this alleged Oè Sunan really should be called Poëamesse of Noël Polan.

It is, in the mind of the arbitrator, impossible that this other Oè Sunan river, if it exists, could have been the one the negotiators of 1899 and of 1902-1904 had in view, for

- a) It is not an affluent of the Noël Bilomi;
- b) The frontier *proposed by Portugal* at that period and *mapped* by common agreement in 1902-1904 would, starting from point A and proceeding *easterly*, pass through *Nunkalai*, then through Kinapua; now Nunkalai is situated several kilometers to the *west* of the mount Kinapua, and *west* of the source of this new river called Oè Sunan by the Portuguese;
- c) *Both* banks of the Noël Bilomi upstream to the east of point A having been assigned to the Netherlands in 1904, the affluent properly serving as a frontier in a northerly direction cannot be sought upstream and east of point A.

The general principles for the interpretation of Conventions demand account be taken "of the real and mutual intention of the Parties without pausing on inexact expressions or terms which possibly they may have used erroneously." The parties have, it is true, made a mistake in giving the name Oè Sunan to the affluent coming from the north at point A, but this is the only affluent (called then by mistake Oè Sunan) which was necessarily, in the common thinking of the Parties, the point at which the boundary ought to leave the Noël Bilomi to proceed north, — and not any other river to which the Portuguese give the name Oè Sunan and which would be located six kilometers farther east. In other words, it is clearly the thalweg of the river to-day called Kabun or Lèos which ought to serve as boundary from point A in a northerly direction.

8. A partir de la source de cette rivière Kabun ou Lèos (dénommée à tort Oè Sunan de 1899 à 1909) au sud, la frontière doit, à teneur de l'article 3, chiffre 10, du traité de 1904, „ traverser autant que „ possible Nipani et Kelali (Keli) ” pour gagner la source de la Noël Meto, au nord.

La délimitation proposée par le Portugal contournerait entièrement la région désignée sur la carte officielle de 1904 sous le nom de Nipani et située, d'après cette carte, près de la source du Kabun ou Lèos ; la frontière s'éloignerait de Nipani de plusieurs kilomètres dans la direction de l'est. Même si, comme le fait une carte portugaise qui n'a pas de caractère contradictoirement reconnu, on donnait le nom de Nipani à une région située beaucoup plus au nord, à l'orient des sources de la Noël Meto, la frontière réclamée par le Portugal ne traverserait pas davantage Nipani, mais le contournerait par le nord.

Le traité de 1904 prescrit de traverser „ autant que possible ” le Nipani. Le tracé suggéré par les Pays-Bas longe la partie occidentale du Nipani et s'en trouve plus près que le tracé proposé par le Portugal.

9. Le Portugal objecte que la ligne directe nord-sud entre les sources de la rivière Kabun et de la rivière Noël Meto morcellerait le territoire des Ambenos en l'attribuant partie aux Pays-Bas et partie au Portugal ; ce morcellement serait contraire au traité de 1859.

Dans la pensée de l'arbitre, cette objection n'est pas fondée en ce sens que, déjà en 1859, une „ partie ” de l'Ambeno était incontestablement placée sous la souveraineté des Pays-Bas. En outre, au cours des négociations de 1899 à 1904, il a été produit des déclarations contradictoires des indigènes, les Amakonos et les Tumbabas néerlandais revendiquant le territoire contesté et les Ambenos portugais le revendiquant de leur côté. Ce prétendu morcellement n'est donc pas démontré. De plus, il a été entendu aux Conférences de 1902, sur les observations du premier délégué portugais lui-même, qu'il n'y avait pas lieu de se préoccuper outre mesure des prétentions de tribus qui se déplacent fréquemment et passent successivement du territoire de l'un des États dans celui de l'autre. L'objection que les territoires d'une même tribu ne doivent pas être

8. Starting from the source of this Kabun or Lèos river (wrongly called Oè Sunan from 1899 to 1909) in the south, the boundary ought, according to the terms of article 3, number 10, of the treaty of 1904, "to cross Nipani and Kelali (Keli) as far as possible" to reach the source of the Noël Meto, on the north.

The boundary proposed by the Portuguese would go entirely around the region designated on the official map of 1904 under the name of Nipani, and situated, according to that map, near the source of the Kabun or Lèos; the frontier would be several kilometers distant from Nipani in an easterly direction. Even if, as does a Portuguese map which has no significance as being admittedly contradictory, one gives the name of Nipani to a region located much more to the north, east of the sources of the Noël Meto, the frontier claimed by Portugal would not even then cross Nipani, but would go around it to the north.

The treaty of 1904 requires crossing Nipani "as far as possible." The layout suggested by the Netherlands runs along the western part of Nipani and is nearer to it than the layout proposed by Portugal.

9. Portugal objects that the direct north and south line between the sources of the river Kabun and the river Noël Meto would divide the territory of the Ambenos, assigning part of it to the Netherlands and part to Portugal; this partition would be contrary to the treaty of 1859.

In the belief of the arbitrator this contention is not established in that sense as already in 1859 a "part" of Ambeno was placed unquestionably under the sovereignty of the Netherlands. Besides, in the course of the negotiations from 1899 to 1904, there were produced contradictory declarations of the natives, the Dutch Amakonos and Tumbabas claiming the disputed territory, and the Portuguese Ambenos claiming it on their side. This alleged partition is not established. It was understood, moreover, in the Conferences of 1902, from the observation of the first Portuguese delegate himself, that there was no occasion to be beyond measure concerned with the pretensions of the tribes who frequently displaced each other and passed successively from the territory of one of the states into that of the other. The objection that the

morcelés, ne saurait ainsi être retenue par l'arbitre, car elle aurait dû être présentée au cours des négociations de 1902-1904 ; actuellement, elle est tardive, parce que le traité de 1904, le seul dont l'arbitre ait à interpréter l'article 3, chiffre 10, ne fait aucune mention d'une volonté des Parties de ne jamais séparer des populations indigènes ; ce traité a au contraire tracé la ligne de démarcation à la suite de Conférences au cours desquelles il a été entendu que les considérations de ce genre ne doivent pas être prépondérantes.

10. La ligne de faite proposée par le Gouvernement néerlandais entre la source de la rivière Kabun (Lèos), au sud, et la source de la Noël Meto, au nord, est suffisamment naturelle pour pouvoir être tracée sur le terrain sans grandes difficultés pratiques. Elle offre l'avantage que les cours d'eau descendent uniformément de cette ligne de faite vers des territoires tous placés sous la souveraineté néerlandaise. Le tracé suggéré par le Gouvernement portugais attribuerait au contraire à des souverainetés différentes la partie supérieure et la partie inférieure de ces divers cours d'eau.

11. D'une façon générale, la demande du Portugal reproduit, en fait, complètement, pour tout le territoire entre la Noël Bilomi au sud et la source de la Noël Meto au nord, la ligne que cet État revendiquait en 1902 et qu'il a abandonnée tant à la fin de la Conférence de 1902 que par le traité de 1904. Si la demande portugaise actuelle était fondée, on ne s'expliquerait pas pourquoi les Pays-Bas ont fait, en 1902, du rejet de cette demande portugaise une condition *sine qua non*. Les Conventions entre États, comme celles entre particuliers, doivent être interprétées „plutôt dans le sens „avec lequel elles peuvent avoir quelque effet que dans le sens avec „lequel elles n'en pourraient produire aucun.” La menace néerlandaise de rompre les négociations en 1902 n'aurait pas de sens si l'intention avait été alors d'attribuer au Portugal précisément le territoire réclamé par les Pays-Bas comme une condition de l'accord.

12. Enfin, si l'on se place au point de vue de l'équité, qu'il importe de ne pas perdre de vue dans les relations internationales, la ligne de faite suggérée par les Pays-Bas n'est pas contraire à l'équité, en ce sens que le Portugal recevra plus de territoires qu'il n'en devait

territories even of one tribe ought not to be partitioned also could not be entertained by the arbitrator, for it ought to have been presented during the course of the negotiations from 1902-1904; now, it is too late, because the treaty of 1904, the only one of which the arbitrator had to interpret article 3, number 10, makes no mention of a wish of the Parties never to divide the native populations; that treaty, on the contrary, laid out the boundary line according to the conferences in the course of which it was understood that considerations of this character ought not to be preponderant.

10. The line of the ridge proposed by the Netherlands Government between the source of the river Kabun (Lèos) to the south, and the source of the Noël Meto to the north, is sufficiently natural to be laid out on land without great practical difficulties. It offers the advantage that the water courses uniformly descend from that line of the ridge toward the territories all placed under Dutch sovereignty. The layout suggested by the Portuguese Government on the contrary would assign to different sovereignties the upper and the lower part of these several streams.

11. In a general way the demand of Portugal reproduces, in fact, completely, for all the territory between the Noël Bilomi to the south and the Noël Meto to the north, the line which that State claimed in 1902 and which it abandoned both at the end of the Conference of 1902 and by the treaty of 1904. If the present Portuguese claim were established, it would not be explained why the Netherlands in 1902 made the rejection of this Portuguese demand a condition *sine qua non*. Agreements between States, as those between individuals, ought to be interpreted "rather in the sense in which they would have some effect than in the sense in which they would produce none." The Dutch threat to break off the negotiations in 1902 would not have meaning if the intention had been then to assign to Portugal precisely the territory claimed by the Netherlands as a condition for agreement.

12. Finally, if one takes the point of view of equity, which it is important not to lose from view in international relations, the line of the ridge proposed by the Netherlands is not contrary to equity, in the sense that Portugal will receive more territory than it ought to hope for according to the theoretical line A C, to which

espérer selon la ligne théorique A C, à laquelle il a consenti en 1904, avant qu'on pût aller reconnaître le terrain. La ligne A C est toute entière tracée à l'intérieur du territoire qui reviendra au Portugal; la République portugaise sera de la sorte mieux partagée, en fait, qu'elle ne pouvait s'y attendre (voir carte annexée VII)¹. Si, au contraire, le tracé oriental suggéré par le Gouvernement portugais était adopté, les Pays-Bas pourraient avec raison prétendre qu'on les prive de presque tout le territoire qui leur avait été attribué théoriquement en 1904 en contre-partie de l'abandon de l'enclave de Maukatar au centre de l'île de Timor et en contre-partie de l'abandon des revendications néerlandaises sur l'ensemble de l' „ enclave ” d'Ambeno.

En conséquence,

L'ARBITRE

vu les deux traités signés à Lisbonne les 20 avril 1859 et 10 juin 1893 et le traité signé à La Haye le 1^{er} octobre 1904 entre les Pays-Bas et le Portugal pour la délimitation de leurs possessions respectives dans l'île de Timor;

vu le compromis d'arbitrage signé à La Haye le 3 avril 1913, et notamment l'article 2 ainsi conçu : „ L'arbitre, statuant sur les „ données fournies par les Parties, décidera en se basant sur les traités „ et les principes généraux du droit international, comment doit „ être fixée conformément à l'article 3, 10^o de la Convention conclue „ à La Haye 1^{er} octobre 1904, concernant la délimitation des pos- „ sessions néerlandaises et portugaises dans l'île de Timor, la limite „ à partir de la Noël Bilomi jusqu'à la source de la Noël Meto ”;

vu les Notes diplomatiques faisant part au soussigné de sa désignation comme arbitre par application de l'article 1^{er} du compromis;

vu les premiers et seconds Mémoires remis en temps utile par chacune des hautes Parties contestantes, ainsi que les cartes et documents annexés aux dits mémoires;

vu les considérations de fait et de droit formulées ci-dessus sous chiffres I à VII;

¹ Annexe C.

she consented in 1904, before it was possible to go to explore the land. The line A C is laid out altogether within the territory that will revert to Portugal; the Portuguese Republic will receive thus a share better, in fact, than it might expect there (see map appended VII).¹ If, on the contrary, the eastern layout suggested by the Portuguese Government were adopted, the Netherlands could rightfully allege they were being deprived of almost all the territory which theoretically had been granted them in 1904 as compensation for abandoning the enclave of Maukatar in the center of the island of Timor and in compensation for abandoning Dutch claims to the whole of the "enclave" of Ambeno.

Consequently,

THE ARBITRATOR

considering the two treaties signed at Lisbon, April 20, 1859, and June 10, 1893, and the treaty signed at The Hague, October 1, 1904, between the Netherlands and Portugal for the delimitation of their respective possessions in the island of Timor;

considering the compromis of arbitration signed at The Hague, April 3, 1913, and especially article 2 thus stated: "The arbitrator, relying on the evidence furnished by the Parties, shall decide, on the basis of the treaties and the general principles of international law, how, conformably to article 3, number 10 of the Convention concluded at The Hague, October 1, 1904, concerning the delimitation of Dutch and Portuguese possessions in the island of Timor, the boundary ought to be fixed from the Noël Bilomi as far as the source of the Noël Meto";

considering the diplomatic notes informing the undersigned of his appointment as arbitrator by application of article 1 of the compromis;

considering the first and second Cases deposited in due time by each of the high contending Parties, as well as the maps and documents annexed to the said cases;

considering the matters of fact and of law formulated above under numbers I to VII;

¹ Annexe C.

vu la Convention signée à La Haye le 18 octobre 1907 pour le règlement pacifique des conflits internationaux;

ARRÊTE

L'article 3, chiffre 10, de la Convention conclue à La Haye le 1^{er} octobre 1904 concernant la délimitation des possessions néerlandaises et portugaises dans l'île de Timor doit être interprété conformément aux conclusions du Gouvernement royal des Pays-Bas, pour la limite à partir de la Noël Bilomi jusqu'à la source de la Noël Meto; en conséquence, il sera procédé à l'arpentage de cette partie de la frontière sur la base de la carte au 1/50,000 annexée sous N° IV au premier Mémoire remis à l'arbitre par le Gouvernement néerlandais. Une reproduction de cette carte signée par l'arbitre est jointe comme annexe VII¹ à la présente sentence dont elle fera partie intégrante.

Les frais, fixés à fr. 2000, ont été prélevés sur la somme de 4000 fr. consignée entre les mains de l'arbitre en exécution de l'art. 8 du compromis du 3 avril 1913; la différence, soit fr. 2000, sera restituée aux deux parties par égales portions et contre quittance, au moment de la notification de la sentence.

Fait en trois exemplaires dont l'un sera remis contre récépissé par M. le secrétaire général du Bureau international de la Cour permanente d'arbitrage à La Haye, à Son Excellence le Ministre des Affaires Étrangères des Pays-Bas pour valoir notification au Gouvernement royal néerlandais, et dont le second sera remis le même jour et dans les mêmes formes à Son Excellence l'Envoyé extraordinaire et Ministre Plénipotentiaire de la République portugaise près S. M. la Reine des Pays-Bas pour valoir notification au Gouvernement de la République portugaise. Le troisième exemplaire sera déposé aux archives du Bureau international de la Cour permanente d'arbitrage.

Paris, le 25 juin 1914.

LARDY.

¹ Annexe C.

considering the Convention signed at The Hague, October 18, 1907, for the Pacific Settlement of International Disputes;

AWARDS

Article 3, number 10, of the Convention concluded at The Hague, October 1, 1904, concerning the delimitation of Dutch and Portuguese possessions in the island of Timor ought to be interpreted conformably to the conclusions of the royal Government of the Netherlands as to the boundary from the Noël Bilomi as far as the source of the Noël Meto; consequently there will be a survey of that part of the frontier on the basis of the map at 1/50,000 annexed under No. IV of the first Case deposited with the arbitrator by the Dutch Government. A reproduction of this map signed by the arbitrator is appended as annex VII¹ to the present award of which it shall be an integral part.

Expenses, fixed at 2000 francs, have been deducted from the sum of 4000 francs placed in the hands of the arbitrator in execution of art. 8 of the compromis of April 3, 1913; the remainder, or 2000 francs, will be remitted in equal shares to the two Parties and against receipt, at the time of the notification of the award.

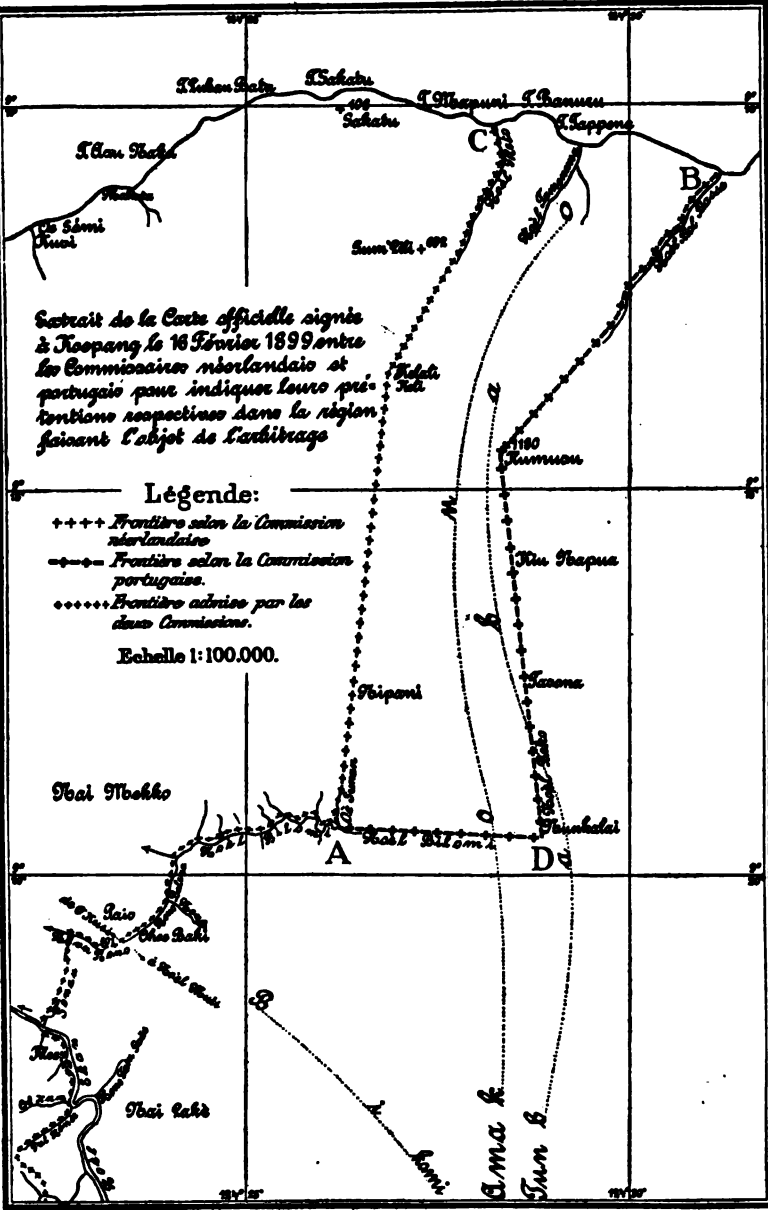
Done in triplicate of which one copy shall be delivered, against receipt by M. the General Secretary of the International Bureau of the Permanent Court of Arbitration at The Hague, to His Excellency the Minister of Foreign Affairs of the Netherlands to serve as notification to the Royal Government of the Netherlands, and of which the second shall be delivered on the same day and in the same manner to His Excellency the Envoy Extraordinary and Minister Plenipotentiary of the Portuguese Republic near H. M. the Queen of the Netherlands, to serve as notification to the Government of the Portuguese Republic. The third shall be deposited in the archives of the International Bureau of the Permanent Court of Arbitration.

Paris, June 25, 1914.

LARDY.

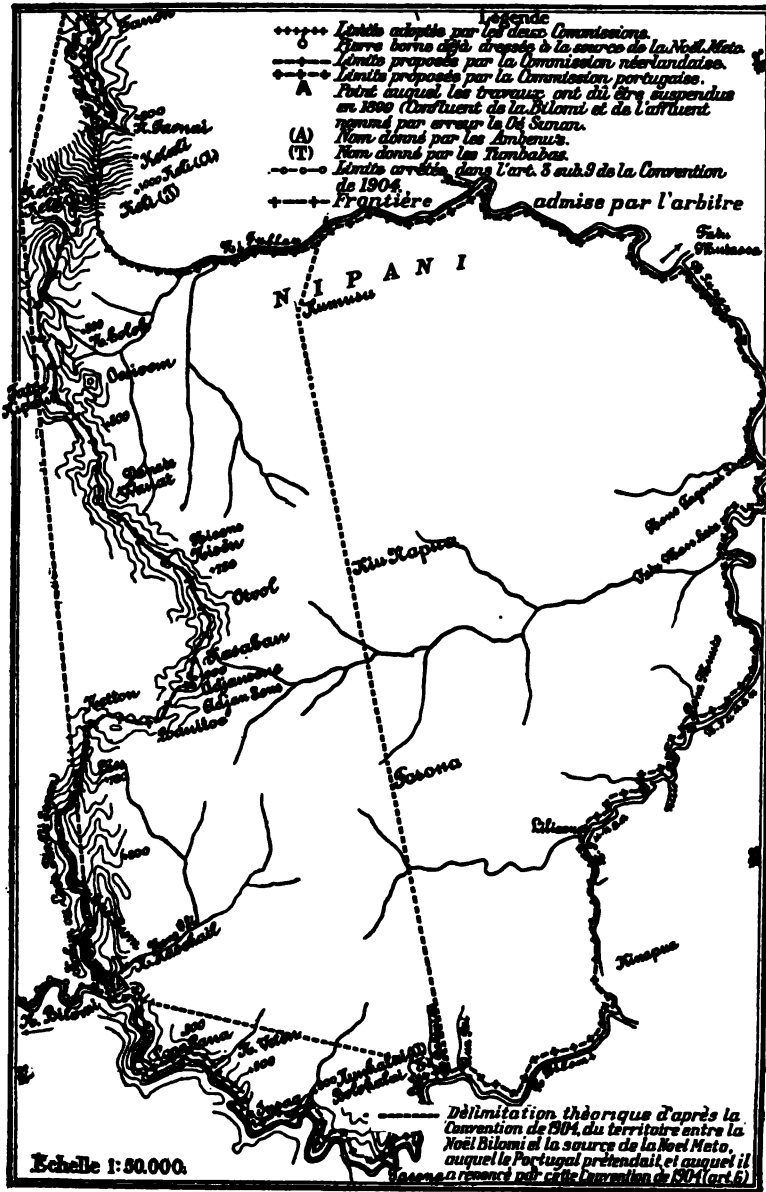
¹ Annexe C.

ANNEXE B



BOUNDARIES ISLAND OF TIMOR

ANNEXE C



BOUNDARIES ISLAND OF TIMOR

APPENDIX I

CONVENTION FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES, JULY 29, 1899

The cases relating to the Pious Fund of the Californias, the Preferential Treatment of Claims of the Blockading Powers against Venezuela, the Japanese House Tax, and the Right of the Muscat Dhows to fly the French flag were settled under the Convention for the Pacific Settlement of International Disputes which was signed at The Hague, July 29, 1899. This Convention was ratified in 1900 by twenty of the twenty-six signatory powers. The remaining signatory powers ratified the Convention before June 15, 1907. On that date fourteen other states signified adherence to the Convention. Shortly after three other states adhered, making a total of forty-three states parties to this Convention early in June, 1907, Sweden and Norway ratifying as a united kingdom in 1900. Certain states ratified the Convention under reservations. The seventeen states which adhered to this Convention in 1907 were states of South America and of Central America acting thus on entering as participants in the Second Hague Conference.

CONVENTION POUR LE RÈGLE- MENT PACIFIQUE DES CON- FLITS INTERNATIONAUX

Sa Majesté l'Empereur d'Allemagne, Roi de Prusse; Sa Majesté l'Empereur d'Autriche, Roi de Bohême etc. et Roi Apostolique de Hongrie; Sa Majesté le Roi des Belges; Sa Majesté l'Empereur de Chine; Sa Ma-

CONVENTION FOR THE PACIFIC SETTLEMENT OF INTER- NATIONAL DISPUTES

His Majesty the Emperor of Germany, King of Prussia; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of the Belgians; His Majesty the Emperor of China;

jesté le Roi de Danemark; Sa Majesté le Roi d'Espagne et en Son Nom Sa Majesté la Reine-Régente du Royaume; le Président des États-Unis d'Amérique; le Président des États-Unis Mexicains; le Président de la République Française; Sa Majesté la Reine du Royaume-Uni de la Grande Bretagne et d'Irlande, Impératrice des Indes; Sa Majesté le Roi des Hellènes; Sa Majesté le Roi d'Italie; Sa Majesté l'Empereur du Japon; Son Altesse Royale le Grand-Duc de Luxembourg, Duc de Nassau; Son Altesse le Prince de Monténégro; Sa Majesté la Reine des Pays-Bas; Sa Majesté Impériale le Schah de Perse; Sa Majesté le Roi de Portugal et des Algarves etc.; Sa Majesté le Roi de Roumaine; Sa Majesté l'Empereur de Toutes les Russies; Sa Majesté le Roi de Serbie; Sa Majesté le Roi de Siam; Sa Majesté le Roi de Suède et de Norvège; le Conseil Fédéral Suisse; Sa Majesté l'Empereur des Ottomans et Son Altesse Royale le Prince de Bulgarie

Animés de la ferme volonté de concourir au maintien de la paix générale;

Résolus à favoriser de tous

His Majesty the King of Denmark; His Majesty the King of Spain and in His Name Her Majesty the Queen Regent of the Kingdom; the President of the United States of America; the President of the United Mexican States; the President of the French Republic; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the King of the Hellenes; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; His Highness the Prince of Montenegro; Her Majesty the Queen of the Netherlands; His Imperial Majesty the Shah of Persia; His Majesty the King of Portugal and of the Algarves, etc.; His Majesty the King of Roumania; His Majesty the Emperor of All the Russias; His Majesty the King of Servia; His Majesty the King of Siam; His Majesty the King of Sweden and Norway; the Swiss Federal Council; His Majesty the Emperor of the Ottomans and His Royal Highness the Prince of Bulgaria

Animated by a strong desire to concert for the maintenance of the general peace;

Resolved to second by their

leurs efforts le règlement amiable des conflits internationaux;

Reconnaissant la solidarité qui unit les membres de la société des nations civilisées;

Voulant étendre l'empire du droit et fortifier le sentiment de la justice internationale;

Convaincus que l'institution permanente d'une juridiction arbitrale, accessible à tous, au sein des Puissances indépendantes, peut contribuer efficacement à ce résultat;

Considérant les avantages d'une organisation générale et régulière de la procédure arbitrale;

Estimant, avec l'Auguste Initiateur de la Conférence Internationale de la Paix, qu'il importe de consacrer dans un accord international les principes d'équité et de droit sur lesquels reposent la sécurité des États et le bien-être des peuples;

Désirant conclure une Convention à cet effet, ont nommé pour Leurs Plénipotentiaires, savoir:

[Dénomination des Plénipotentiaires]

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes:

best efforts the friendly settlement of international disputes;

Recognizing the solidarity which unites the members of the society of civilized nations;

Desirous of extending the empire of law, and of strengthening the appreciation of international justice;

Convinced that the permanent institution of a Court of Arbitration, accessible to all, in the midst of the independent Powers, will contribute effectively to this result;

Having regard to the advantages attending the general and regular organization of arbitral procedure;

Sharing the opinion of the August Initiator of the International Peace Conference that it is expedient to record in an international Agreement the principles of equity and right on which are based the security of States and the welfare of peoples;

Being desirous of concluding a Convention to this effect, have appointed as their Plenipotentiaries, to wit:

[Names of plenipotentiaries]

Who, after communication of their full powers, found in good and due form, have agreed on the following provisions:

TITRE I. — DU MAINTIEN DE LA
PAIX GÉNÉRALE

ARTICLE 1

En vue de prévenir autant que possible le recours à la force dans les rapports entre les États, les Puissances signataires conviennent d'employer tous leurs efforts pour assurer le règlement pacifique des différends internationaux.

TITRE II. — DES BONS OFFICES ET DE
LA MÉDIATION

ARTICLE 2

En cas de dissentiment grave ou de conflit, avant d'en appeler aux armes, les Puissances signataires conviennent d'avoir recours, en tant que les circonstances le permettront, aux bons offices ou à la médiation d'une ou de plusieurs Puissances amies.

ARTICLE 3

Indépendamment de ce recours, les Puissances signataires jugent utile qu'une ou plusieurs Puissances étrangères au conflit offrent de leur propre initiative, en tant que les circonstances s'y prêtent, leurs bons offices ou leur médiation aux États en conflit.

Le droit d'offrir les bons offices ou la médiation appartient aux Puissances étrangères au conflit, même pendant le cours des hostilités.

TITLE I. — ON THE MAINTENANCE OF
THE GENERAL PEACE

ARTICLE 1

With a view to obviating, as far as possible, recourse to force in the relations between States, the Signatory Powers agree to use their best efforts to insure the pacific settlement of international differences.

TITLE II. — ON GOOD OFFICES AND
MEDIATION

ARTICLE 2

In case of serious disagreement or conflict, before an appeal to arms, the Signatory Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

ARTICLE 3

Independently of this recourse, the Signatory Powers recommend that one or more Powers, strangers to the dispute, should, on their own initiative, and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers, strangers to the dispute, have the right to offer good offices or mediation, even during the course of hostilities.

L'exercice de ce droit ne peut jamais être considéré par l'une ou l'autre des Parties en litige comme un acte peu amical.

The exercise of this right can never be regarded by one or the other of the parties in conflict as an unfriendly act.

ARTICLE 4

Le rôle de médiateur consiste à concilier les prétentions opposées et à apaiser les ressentiments qui peuvent s'être produits entre les États en conflit.

ARTICLE 4

The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

ARTICLE 5

Les fonctions de médiateur cessent du moment où il est constaté, soit par l'une des Parties en litige, soit par le médiateur lui-même, que les moyens de conciliation proposés par lui ne sont pas acceptés.

ARTICLE 5

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute, or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

ARTICLE 6

Les bons offices et la médiation, soit sur le recours des Parties en conflit, soit sur l'initiative des Puissances étrangères au conflit, ont exclusivement le caractère de conseil et n'ont jamais force obligatoire.

ARTICLE 6

Good offices and mediation, either at the request of the parties at variance, or on the initiative of Powers strangers to the dispute, have exclusively the character of advice and never have binding force.

ARTICLE 7

L'acceptation de la médiation ne peut avoir pour effet, sauf convention contraire, d'interrompre, de retarder ou d'entraver la mobilisation et autres mesures préparatoires à la guerre.

ARTICLE 7

The acceptance of mediation can not, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

Si elle intervient après l'ouverture des hostilités, elle n'interrompt pas, sauf convention con-

If mediation occurs after the commencement of hostilities, it causes no interruption to the mili-

traire, les opérations militaires en cours.

ARTICLE 8

Les Puissances signataires sont d'accord pour recommander l'application, dans les circonstances qui le permettent, d'une médiation spéciale sous la forme suivante :

En cas de différend grave compromettant la paix, les États en conflit choisissent respectivement une Puissance à laquelle ils confient la mission d'entrer en rapport direct avec la Puissance choisie d'autre part, à l'effet de prévenir la rupture des relations pacifiques.

Pendant la durée de ce mandat dont le terme, sauf stipulation contraire, ne peut excéder trente jours, les États en litige cessent tout rapport direct au sujet du conflit, lequel est considéré comme déferé exclusivement aux Puissances médiatrices. Celles-ci doivent appliquer tous leurs efforts à régler le différend.

En cas de rupture effective des relations pacifiques, ces Puissances demeurent chargées de la mission commune de profiter de toute occasion pour rétablir la paix.

TITRE III. — DES COMMISSIONS INTERNATIONALES D'ENQUÊTE

ARTICLE 9

Dans les litiges d'ordre inter-

tary operations in progress, unless there be an agreement to the contrary.

ARTICLE 8

The Signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form :

In case of a serious difference endangering the peace, the States at variance choose respectively a Power, to whom they intrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, can not exceed thirty days, the States in conflict cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, who must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

TITRE III. — ON INTERNATIONAL COMMISSIONS OF INQUIRY

ARTICLE 9

In differences of an inter-

national n'engageant ni l'honneur ni des intérêts essentiels et provenant d'une divergence d'appréciation sur des points de fait, les Puissances signataires jugent utile que les Parties qui n'auraient pu se mettre d'accord par les voies diplomatiques instituent, en tant que les circonstances le permettront, une Commission internationale d'enquête chargée de faciliter la solution de ces litiges en éclaircissant, par un examen impartial et consciencieux, les questions de fait.

national nature involving neither honor nor vital interests, and arising from a difference of opinion on points of fact, the Signatory Powers recommend that the parties who have not been able to come to an agreement by means of diplomacy should, as far as circumstances allow, institute an International Commission of Inquiry, to facilitate a solution of these differences by elucidating the facts by means of an impartial and conscientious investigation.

ARTICLE 10

Les Commissions internationales d'enquête sont constituées par convention spéciale entre les Parties en litige.

La Convention d'enquête précise les faits à examiner et l'étendue des pouvoirs des Commissaires.

Elle règle la procédure.

L'enquête a lieu contradictoirement.

La forme et les délais à observer, en tant qu'ils ne sont pas fixés par la Convention d'enquête, sont déterminés par la Commission elle-même.

ARTICLE 10

The International Commissions of Inquiry are constituted by special agreement between the parties in conflict.

The Convention for an inquiry defines the facts to be examined and the extent of the Commissioners' powers.

It settles the procedure.

On the inquiry both sides must be heard.

The form and the periods to be observed, if not stated in the inquiry Convention, are decided by the Commission itself.

ARTICLE 11

Les Commissions internationales d'enquête sont formées, sauf stipulation contraire, de la ma-

ARTICLE 11

The International Commissions of Inquiry are formed, unless otherwise stipulated, in

nière déterminée par l'article 32 de la présente Convention.

the manner fixed by article 32 of the present Convention.

ARTICLE 12

Les Puissances en litige s'engagent à fournir à la Commission internationale d'enquête, dans la plus large mesure qu'Elles jugeront possible, tous les moyens et toutes les facilités nécessaires pour la connaissance complète et l'appréciation exacte des faits en question.

ARTICLE 12

The Powers in dispute engage to supply the International Commission of Inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to be completely acquainted with and to accurately understand the facts in question.

ARTICLE 13

La Commission internationale d'enquête présente aux Puissances en litige son rapport signé par tous les membres de la Commission.

ARTICLE 13

The International Commission of Inquiry communicates its report to the conflicting Powers, signed by all the members of the Commission.

ARTICLE 14

Le rapport de la Commission internationale d'enquête, limité à la constatation des faits, n'a nullement le caractère d'une Sentence arbitrale. Il laisse aux Puissances en litige une entière liberté pour la suite à donner à cette constatation.

ARTICLE 14

The report of the International Commission of Inquiry is limited to a statement of facts, and has in no way the character of an Arbitral Award. It leaves the conflicting Powers entire freedom as to the effect to be given to this statement.

TITRE IV. — DE L'ARBITRAGE INTERNATIONAL

TITLE IV. — ON INTERNATIONAL ARBITRATION

CHAPITRE I. — *De la Justice arbitrale*

CHAPTER I. — *On the System of Arbitration*

ARTICLE 15

L'arbitrage international a pour objet le règlement de litiges entre les États par des juges de

ARTICLE 15

International arbitration has for its object the settlement of differences between States by

leur choix et sur la base du respect du droit.

judges of their own choice, and on the basis of respect for law.

ARTICLE 16

Dans les questions d'ordre juridique, et en premier lieu dans les questions d'interprétation ou d'application des Conventions internationales, l'arbitrage est reconnu par les Puissances signataires comme le moyen le plus efficace et en même temps le plus équitable de régler les litiges qui n'ont pas été résolus par les voies diplomatiques.

ARTICLE 16

In questions of a legal nature, and especially in the interpretation or application of International Conventions, arbitration is recognized by the Signatory Powers as the most effective, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle.

ARTICLE 17

La Convention d'arbitrage est conclue pour des contestations déjà nées ou pour des contestations éventuelles.

Elle peut concerner tout litige ou seulement les litiges d'une catégorie déterminée.

ARTICLE 17

The Arbitration Convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

ARTICLE 18

La Convention d'arbitrage implique l'engagement de se soumettre de bonne foi à la Sentence arbitrale.

ARTICLE 18

The Arbitration Convention implies the engagement to submit loyally to the Award.

ARTICLE 19

Indépendamment des Traités généraux ou particuliers qui stipulent actuellement l'obligation du recours à l'arbitrage pour les Puissances signataires, ces Puissances se réservent de conclure, soit avant la ratification du présent Acte, soit postérieure-

ARTICLE 19

Independently of general or private Treaties expressly stipulating recourse to arbitration as obligatory on the Signatory Powers, these Powers reserve to themselves the right of concluding, either before the ratification of the present Act or later,

ment, des Accords nouveaux, généraux ou particuliers, en vue d'étendre l'arbitrage obligatoire à tous les cas qu'Elles jugeront possible de lui soumettre.

new Agreements, general or private, with a view to extending obligatory arbitration to all cases which they may consider it possible to submit to it.

CHAPITRE II. — *De la Cour permanente d'arbitrage*

CHAPTER II. — *On the Permanent Court of Arbitration*

ARTICLE 20

ARTICLE 20

Dans le but de faciliter le recours immédiat à l'arbitrage pour les différends internationaux qui n'ont pu être réglés par la voie diplomatique, les Puissances signataires s'engagent à organiser une Cour permanente d'arbitrage, accessible en tout temps et fonctionnant, sauf stipulation contraire des Parties, conformément aux Règles de procédure insérées dans la présente Convention.

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the Signatory Powers undertake to organize a permanent Court of Arbitration, accessible at all times and operating, unless otherwise stipulated by the parties, in accordance with the Rules of Procedure inserted in the present Convention.

ARTICLE 21

ARTICLE 21

La Cour permanente sera compétente pour tous les cas d'arbitrage, à moins qu'il n'y ait entente entre les Parties pour l'établissement d'une juridiction spéciale.

The Permanent Court shall be competent for all arbitration cases, unless the parties agree to institute a special Tribunal.

ARTICLE 22

ARTICLE 22

Un Bureau international établi à La Haye sert de greffe à la Cour.

An International Bureau, established at The Hague, serves as record office for the Court.

Ce Bureau est l'intermédiaire des communications relatives aux réunions de celle-ci.

This Bureau is the channel for communications relative to the meetings of the Court.

Il a la garde des Archives et la gestion de toutes les affaires administratives.

It has the custody of the archives and conducts all the administrative business.

Les Puissances signataires s'engagent à communiquer au Bureau international de La Haye, une copie certifiée conforme de toute stipulation d'arbitrage intervenue entre elles et de toute sentence arbitrale les concernant et rendue par des juridictions spéciales.

Elles s'engagent à communiquer de même au Bureau, les Lois, Règlements et Documents constatant éventuellement l'exécution des sentences rendues par la Cour.

ARTICLE 23

Chaque Puissance signataire désignera, dans les trois mois qui suivront la ratification par elle du présente Acte, quatre personnes au plus, d'une compétence reconnue dans les questions de droit international, jouissant de la plus haute considération morale et disposées à accepter les fonctions d'Arbitres.

Les personnes ainsi désignées seront inscrites, au titre de Membres de la Cour, sur une liste qui sera notifiée à toutes les Puissances signataires par les soins du Bureau.

Toute modification à la liste des Arbitres est portée, par les soins du Bureau, à la connaissance des Puissances signataires.

Deux ou plusieurs Puissances

The Signatory Powers undertake to communicate to the International Bureau at The Hague a duly certified copy of any conditions of arbitration arrived at between them, and of any award concerning them delivered by special Tribunals.

They undertake also to communicate to the Bureau the Laws, Regulations, and Documents eventually showing the execution of the awards given by the Court.

ARTICLE 23

Within the three months following its ratification of the present Act, each Signatory Power shall select four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of Arbitrators.

The persons thus selected shall be inscribed, as Members of the Court, in a list which shall be notified by the Bureau to all the Signatory Powers.

Any alteration in the list of Arbitrators is brought by the Bureau to the knowledge of the Signatory Powers.

Two or more Powers may agree

peuvent s'entendre pour la désignation en commun d'un ou de plusieurs Membres.

La même personne peut être désignée par des Puissances différentes.

Les Membres de la Cour sont nommés pour un terme de six ans. Leur mandat peut être renouvelé.

En cas de décès ou de retraite d'un Membre de la Cour, il est pourvu à son remplacement selon le mode fixé pour sa nomination.

ARTICLE 24

Lorsque les Puissances signataires veulent s'adresser à la Cour permanente pour le règlement d'un différend survenu entre elles, le choix des Arbitres appelés à former le Tribunal compétent pour statuer sur ce différend, doit être fait dans la liste générale des Membres de la Cour.

A défaut de constitution du Tribunal arbitral par l'accord immédiat des Parties, il est procédé de la manière suivante:

Chaque Partie nomme deux Arbitres et ceux-ci choisissent ensemble un Surarbitre.

En cas de partage des voix, le choix de Surarbitre est confié à une Puissance tierce, désignée de commun accord par les Parties.

Si l'accord ne s'établit pas à ce

on the selection in common of one or more Members.

The same person can be selected by different Powers.

The Members of the Court are appointed for a term of six years. Their appointments can be renewed.

In case of the death or retirement of a Member of the Court, his place shall be filled in accordance with the method of his appointment.

ARTICLE 24

When the Signatory Powers desire to have recourse to the Permanent Court for the settlement of a difference that has arisen between them, the Arbitrators called upon to form the competent Tribunal to decide this difference must be chosen from the general list of Members of the Court.

Failing the direct agreement of the parties on the composition of the Arbitration Tribunal, the following course shall be pursued:

Each party appoints two Arbitrators, and these together choose an Umpire.

If the votes are equal, the choice of the Umpire is intrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived

sujet, chaque Partie désigne une Puissance différente et le choix du Surarbitre est fait de concert par les Puissances ainsi désignées.

Le Tribunal étant ainsi composé, les Parties notifient au Bureau leur décision de s'adresser à la Cour et les noms des Arbitres.

Le Tribunal arbitral se réunit à la date fixée par les Parties.

Les Membres de la Cour, dans l'exercice de leurs fonctions et en dehors de leur Pays, jouissent des privilèges et immunités diplomatiques.

ARTICLE 25

Le Tribunal arbitral siège d'ordinaire à La Haye.

Le siège ne peut, sauf le cas de force majeure, être changé par le Tribunal que de l'assentiment des Parties.

ARTICLE 26

Le Bureau international de La Haye est autorisé à mettre ses locaux et son organisation à la disposition des Puissances signataires pour le fonctionnement de toute juridiction spéciale d'arbitrage.

La juridiction de la Cour permanente peut être étendue, dans les conditions prescrites par les Règlements, aux litiges existant

at on this subject, each party selects a different Power, and the choice of the Umpire is made in concert by the Powers thus selected.

The Tribunal being thus composed, the parties notify to the Bureau their determination to have recourse to the Court and the names of the Arbitrators.

The Tribunal of Arbitration assembles on the date fixed by the parties.

The Members of the Court, in the discharge of their duties and out of their own country, enjoy diplomatic privileges and immunities.

ARTICLE 25

The Tribunal of Arbitration has its ordinary seat at The Hague.

Except in cases of necessity, the place of session can only be altered by the Tribunal with the assent of the parties.

ARTICLE 26

The International Bureau at The Hague is authorized to place its premises and its staff at the disposal of the Signatory Powers for the operations of any special Board of Arbitration.

The jurisdiction of the Permanent Court may, within the conditions laid down in the Regulations, be extended to disputes

entre des Puissances non signataires ou entre des Puissances signataires et des Puissances non signataires, si les Parties sont convenues de recourir à cette juridiction.

ARTICLE 27

Les Puissances signataires considèrent comme un devoir, dans le cas où un conflit aigu menacerait d'éclater entre deux ou plusieurs d'entre Elles, de rappeler à celles-ci que la Cour permanente leur est ouverte.

En conséquence, Elles déclarent que le fait de rappeler aux Parties en conflit les dispositions de la présente Convention, et le conseil donné, dans l'intérêt supérieur de la paix, de s'adresser à la Cour permanente, ne peuvent être considérés que comme actes de Bons Offices.

ARTICLE 28

Un Conseil administratif permanent, composé des représentants diplomatiques des Puissances signataires accrédités à La Haye et du Ministre des Affaires Étrangères des Pays-Bas qui remplira les fonctions de Président, sera constitué dans cette ville le plus tôt possible après la ratification du présent Acte par neuf Puissances au moins.

Ce Conseil sera chargé d'établir et d'organiser le Bureau international, lequel demeurera

between non-Signatory Powers, or between Signatory Powers and non-Signatory Powers, if the parties are agreed on recourse to this Tribunal.

ARTICLE 27

The Signatory Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the conflicting parties of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as friendly actions.

ARTICLE 28

A Permanent Administrative Council, composed of the Diplomatic Representatives of the Signatory Powers accredited to The Hague and of the Netherlands Minister for Foreign Affairs, who will act as President, shall be instituted in this town as soon as possible after the ratification of the present Act by at least nine Powers.

This Council will be charged with the establishment and organization of the International Bu-

sous sa direction et sous son contrôle.

Il notifiera aux Puissances la constitution de la Cour et pourvoira à l'installation de celle-ci.

Il arrêtera son règlement d'ordre ainsi que tous autres règlements nécessaires.

Il décidera toutes les questions administratives qui pourraient surgir touchant le fonctionnement de la Cour.

Il aura tout pouvoir quant à la nomination, la suspension ou la révocation des fonctionnaires et employés du Bureau.

Il fixera les traitements et salaires et contrôlera la dépense générale.

La présence de cinq membres dans les réunions dûment convoquées suffit pour permettre au Conseil de délibérer valablement. Les décisions sont prises à la majorité des voix.

Le Conseil communique sans délai aux Puissances signataires les règlements adoptés par lui. Il leur adresse chaque année un rapport sur les travaux de la Cour, sur le fonctionnement des services administratifs et sur les dépenses.

ARTICLE 29

Les frais du Bureau seront supportés par les Puissances signataires dans la proportion établie par le Bureau international de l'Union postale universelle.

reau, which will be under its direction and control.

It will notify to the Powers the constitution of the Court and will provide for its installation.

It will settle its Rules of Procedure and all other necessary Regulations.

It will decide all questions of administration which may arise with regard to the operations of the Court.

It will have entire control over the appointment, suspension, or dismissal of the officials and employés of the Bureau.

It will fix the payments and salaries, and control the general expenditure.

At meetings duly summoned the presence of five members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the Signatory Powers without delay the Regulations adopted by it. It furnishes them with an annual Report on the labors of the Court, the working of the administration, and the expenses.

ARTICLE 29

The expenses of the Bureau shall be borne by the Signatory Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

CHAPITRE III. — *De la Procédure arbitrale*CHAPTER III. — *On Arbitral Procedure*

ARTICLE 30

En vue de favoriser le développement de l'arbitrage, les Puissances signataires ont arrêté les règles suivantes qui seront applicables à la procédure arbitrale, en tant que les Parties ne sont pas convenues d'autres règles.

ARTICLE 30

With a view to encourage the development of arbitration, the Signatory Powers have agreed on the following rules which shall be applicable to arbitral procedure, unless other rules have been agreed on by the parties.

ARTICLE 31

Les Puissances qui recourent à l'arbitrage signent un Acte spécial (compromis) dans lequel sont nettement déterminés l'objet du litige ainsi que l'étendue des pouvoirs des Arbitres. Cet Acte implique l'engagement des Parties de se soumettre de bonne foi à la sentence arbitrale.

ARTICLE 31

The Powers who have recourse to arbitration sign a special Act ("Compromis"), in which the subject of the difference is clearly defined, as well as the extent of the Arbitrators' powers. This Act implies the undertaking of the parties to submit loyally to the award.

ARTICLE 32

Les fonctions arbitrales peuvent être conférées à un Arbitre unique ou à plusieurs Arbitres désignés par les Parties à leur gré, ou choisis par Elles parmi les Membres de la Cour permanente d'arbitrage établie par le présent Acte.

ARTICLE 32

The duties of Arbitrator may be conferred on one Arbitrator alone or on several Arbitrators selected by the parties as they please, or chosen by them from the Members of the Permanent Court of Arbitration established by the present Act.

A défaut de constitution du Tribunal par l'accord immédiat des Parties, il est procédé de la manière suivante:

Failing the constitution of the Tribunal by direct agreement between the parties, the following course shall be pursued:

Chaque Partie nomme deux Arbitres et ceux-ci choisissent ensemble un Surarbitre.

Each party appoints two Arbitrators, and these latter together choose an Umpire.

En cas de partage des voix, le choix de Surarbitre est confié à une Puissance tierce, désignée de commun accord par les Parties.

Si l'accord ne s'établit pas à ce sujet, chaque Partie désigne une Puissance différente et le choix du Surarbitre est fait de concert par les Puissances ainsi désignées.

ARTICLE 33

Lorsqu'un Souverain ou un Chef d'État est choisi pour Arbitre, la procédure arbitrale est réglée par Lui.

ARTICLE 34

Le Surarbitre est de droit Président du Tribunal.

Lorsque le Tribunal ne comprend pas de Surarbitre, il nomme lui-même son Président.

ARTICLE 35

En cas de décès, de démission ou d'empêchement, pour quelque cause que ce soit, de l'un des Arbitres, il est pourvu à son remplacement selon le mode fixé pour sa nomination.

ARTICLE 36

Le siège du Tribunal est désigné par les Parties. A défaut de cette désignation, le Tribunal siège à La Haye.

Le siège ainsi fixé ne peut, sauf le cas de force majeure, être changé par le Tribunal que de l'assentiment des Parties.

In case of equal voting, the choice of the Umpire is intrusted to a third Power, selected by the parties by common accord.

If no agreement is arrived at on this subject, each party selects a different Power, and the choice of the Umpire is made in concert by the Powers thus selected.

ARTICLE 33

When a Sovereign or a Chief of a State is chosen as Arbitrator, the arbitral procedure is settled by him.

ARTICLE 34

The Umpire is by right President of the Tribunal.

When the Tribunal does not include an Umpire, it appoints its own President.

ARTICLE 35

In case of the death, retirement, or disability from any cause of one of the Arbitrators, his place shall be filled in accordance with the method of his appointment.

ARTICLE 36

The Tribunal's place of session is selected by the parties. Failing this selection, the Tribunal sits at The Hague.

The place thus fixed can not, except in case of necessity, be changed by the Tribunal without the assent of the parties.

ARTICLE 37

Les Parties ont le droit de nommer auprès du Tribunal des Délégués ou Agents spéciaux, avec la mission de servir d'intermédiaires entre Elles et le Tribunal.

Elles sont en outre autorisées à charger de la défense de leurs droits et intérêts devant le Tribunal, des conseils ou avocats nommés par Elles à cet effet.

ARTICLE 38

Le Tribunal décide du choix des langues dont il fera usage et dont l'emploi sera autorisé devant lui.

ARTICLE 39

La procédure arbitrale comprend en règle générale deux phases distinctes: l'instruction et les débats.

L'instruction consiste dans la communication faite par les Agents respectifs, aux Membres du Tribunal et à la Partie adverse, de tous actes imprimés ou écrits et de tous documents contenant les moyens invoqués dans la cause. Cette communication aura lieu dans la forme et dans les délais déterminés par le Tribunal en vertu de l'article 49.

Les débats consistent dans le développement oral des moyens des Parties devant le Tribunal.

ARTICLE 37

The parties have the right to appoint delegates or special agents to attend the Tribunal, for the purpose of serving as intermediaries between them and the Tribunal.

They are further authorized to retain, for the defense of their rights and interests before the Tribunal, counsel or advocates appointed by them for this purpose.

ARTICLE 38

The Tribunal decides on the choice of languages to be used by itself, and to be authorized for use before it.

ARTICLE 39

As a general rule the arbitral procedure comprises two distinct phases: preliminary examination and discussion.

Preliminary examination consists in the communication by the respective agents to the Members of the Tribunal and to the opposite party of all printed or written Acts and of all documents containing the arguments invoked in the case. This communication shall be made in the form and within the periods fixed by the Tribunal in accordance with article 49.

Discussion consists in the oral development before the Tribunal of the arguments of the parties.

ARTICLE 40

Toute pièce produite par l'une des Parties doit être communiquée à l'autre Partie.

ARTICLE 40

Every document produced by one party must be communicated to the other party.

ARTICLE 41

Les débats sont dirigés par le Président.

Ils ne sont publics qu'en vertu d'une décision du Tribunal, prise avec l'assentiment des Parties.

Ils sont consignés dans les procès-verbaux rédigés par des Secrétaires que nomme le Président. Ces procès-verbaux ont seuls caractère authentique.

ARTICLE 41

The discussions are under the direction of the President.

They are only public if it be so decided by the Tribunal, with the assent of the parties.

They are recorded in the *procès-verbaux* drawn up by the Secretaries appointed by the President. These *procès-verbaux* alone have an authentic character.

ARTICLE 42

L'instruction étant close, le Tribunal a le droit d'écarter du débat tous actes ou documents nouveaux qu'une des Parties voudrait lui soumettre sans le consentement de l'autre.

ARTICLE 42

When the preliminary examination is concluded, the Tribunal has the right to refuse discussion of all fresh Acts or documents which one party may desire to submit to it without the consent of the other party.

ARTICLE 43

Le Tribunal demeure libre de prendre en considération les actes ou documents nouveaux sur lesquels les agents ou conseils des Parties appelleraient son attention.

En ce cas, le Tribunal a le droit de requérir la production de ces actes ou documents, sauf l'obligation d'en donner connaissance à la Partie adverse.

ARTICLE 43

The Tribunal is free to take into consideration fresh Acts or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the Tribunal has the right to require the production of these Acts or documents, but is obliged to make them known to the opposite party.

ARTICLE 44

Le Tribunal peut, en outre, requérir des agents des Parties la production de tous actes et demander toutes explications nécessaires. En cas de refus, le Tribunal en prend acte.

ARTICLE 45

Les agents et les conseils des Parties sont autorisés à présenter oralement au Tribunal tous les moyens qu'ils jugent utiles à la défense de leur cause.

ARTICLE 46

Ils ont le droit de soulever des exceptions et incidents. Les décisions du Tribunal sur ces points sont définitives et ne peuvent donner lieu à aucune discussion ultérieure.

ARTICLE 47

Les Membres du Tribunal ont le droit de poser des questions aux agents et aux conseils des Parties et de leur demander des éclaircissements sur les points douteux.

Ni les questions posées, ni les observations faites par les Membres du Tribunal pendant le cours des débats ne peuvent être regardées comme l'expression des opinions du Tribunal en général ou de ses Membres en particulier.

ARTICLE 48

Le Tribunal est autorisé à déterminer sa compétence en inter-

ARTICLE 44

The Tribunal can, besides, require from the agents of the parties the production of all Acts, and can demand all necessary explanations. In case of refusal, the Tribunal takes note of it.

ARTICLE 45

The agents and counsel of the parties are authorized to present orally to the Tribunal all the arguments they may think expedient in defense of their case.

ARTICLE 46

They have the right to raise objections and points. The decisions of the Tribunal on those points are final, and can not form the subject of any subsequent discussion.

ARTICLE 47

The Members of the Tribunal have the right to put questions to the agents and counsel of the parties, and to demand explanations from them on doubtful points.

Neither the questions put nor the remarks made by Members of the Tribunal during the discussions can be regarded as an expression of opinion by the Tribunal in general, or by its Members in particular.

ARTICLE 48

The Tribunal is authorized to declare its competence in inter-

prêtant le compromis ainsi que les autres traités qui peuvent être invoqués dans la matière, et en appliquant les principes du droit international.

preting the "Compromis" as well as the other Treaties which may be invoked in the case, and in applying the principles of international law.

ARTICLE 49

Le Tribunal a le droit de rendre des ordonnances de procédure pour la direction du procès, de déterminer les formes et délais dans lesquels chaque Partie devra prendre ses conclusions et de procéder à toutes les formalités que comporte l'administration des preuves.

ARTICLE 49

The Tribunal has the right to issue Rules of Procedure for the conduct of the case, to decide the forms and periods within which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

ARTICLE 50

Les agents et les conseils des Parties ayant présenté tous les éclaircissements et preuves à l'appui de leur cause, le Président prononce la clôture des débats.

ARTICLE 50

When the agents and counsel of the parties have submitted all explanations and evidence in support of their case, the President pronounces the discussion closed.

ARTICLE 51

Les délibérations du Tribunal ont lieu à huis clos.

ARTICLE 51

The deliberations of the Tribunal take place in private.

Toute décision est prise à la majorité des Membres du Tribunal.

Every decision is taken by a majority of Members of the Tribunal.

Le refus d'un Membre de prendre part au vote doit être constaté dans le procès-verbal.

The refusal of a Member to vote must be recorded in the *procès-verbal*.

ARTICLE 52

La sentence arbitrale, votée à la majorité des voix, est motivée. Elle est rédigée par écrit et signée par chacun des Membres du Tribunal.

ARTICLE 52

The award, given by a majority of votes, is accompanied by a statement of reasons. It is drawn up in writing and signed by each Member of the Tribunal.

Ceux des Membres qui sont restés en minorité peuvent constater, en signant, leur dissentiment.

ARTICLE 53

La sentence arbitrale est lue en séance publique du Tribunal, les agents et les conseils de Parties présents ou dûment appelés.

ARTICLE 54

La sentence arbitrale, dûment prononcée et notifiée aux agents des Parties en litige, décide définitivement et sans appel la contestation.

ARTICLE 55

Les Parties peuvent se réserver dans le compromis de demander la revision de la sentence arbitrale.

Dans ce cas, et sauf convention contraire, la demande doit être adressée au Tribunal qui a rendu la sentence. Elle ne peut être motivée que par la découverte d'un fait nouveau qui eût été de nature à exercer une influence décisive sur la sentence et qui, lors de la clôture des débats, était inconnu du Tribunal lui-même et de la Partie qui a demandé la revision.

La procédure de revision ne peut être ouverte que par une décision du Tribunal constatant expressément l'existence du fait nouveau, lui reconnaissant les caractères prévus par le para-

Those Members who are in the minority may record their dissent when signing.

ARTICLE 53

The award is read out at a public meeting of the Tribunal, the agents and counsel of the parties being present, or duly summoned to attend.

ARTICLE 54

The award, duly pronounced and notified to the agents of the parties at variance, puts an end to the dispute definitely and without appeal.

ARTICLE 55

The parties can reserve in the "Compromis" the right to demand the revision of the award.

In this case, and unless there be an agreement to the contrary, the demand must be addressed to the Tribunal which pronounced the award. It can only be made on the ground of the discovery of some new fact calculated to exercise a decisive influence on the award, and which, at the time the discussion was closed, was unknown to the Tribunal and to the party demanding the revision.

Proceedings for revision can only be instituted by a decision of the Tribunal expressly recording the existence of the new fact, recognizing in it the character described in the foregoing para-

graphe précédent et déclarant à ce titre la demande recevable.

Le compromis détermine le délai dans lequel la demande de revision doit être formée.

ARTICLE 56

La sentence arbitrale n'est obligatoire que pour les Parties qui ont conclu le compromis.

Lorsqu'il s'agit de l'interprétation d'une convention à laquelle ont participé d'autres Puissances que les Parties en litige, celles-ci notifient aux premières le compromis qu'elles ont conclu. Chacune de ces Puissances a le droit d'intervenir au procès. Si une ou plusieurs d'entre Elles ont profité de cette faculté, l'interprétation contenue dans la sentence est également obligatoire à leur égard.

ARTICLE 57

Chaque Partie supporte ses propres frais et une part égale des frais du Tribunal.

DISPOSITIONS GÉNÉRALES

ARTICLE 58

La présente Convention sera ratifiée dans le plus bref délai possible.

Les ratifications seront déposées à La Haye.

Il sera dressé du dépôt de chaque ratification un procès-verbal, dont une copie, certifiée

graph, and declaring the demand admissible on this ground.

The "Compromis" fixes the period within which the demand for revision must be made.

ARTICLE 56

The award is only binding on the parties who concluded the "Compromis."

When there is a question of interpreting a Convention to which Powers other than those concerned in the dispute are parties, the latter notify to the former the "Compromis" they have concluded. Each of these Powers has the right to intervene in the case. If one or more of them avail themselves of this right, the interpretation contained in the award is equally binding on them.

ARTICLE 57

Each party pays its own expenses and an equal share of those of the Tribunal.

GENERAL PROVISIONS

ARTICLE 58

The present Convention shall be ratified as speedily as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up recording the receipt of each ratification, and a copy duly

conforme, sera remise par la voie diplomatique à toutes les Puissances qui ont été représentées à la Conférence Internationale de la Paix de La Haye.

certified shall be sent, through the diplomatic channel, to all the Powers who were represented at the International Peace Conference at The Hague.

ARTICLE 59

Les Puissances non signataires qui ont été représentées à la Conférence Internationale de la Paix pourront adhérer à la présente Convention. Elles auront à cet effet à faire connaître leur adhésion aux Puissances contractantes, au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et communiquée par celui-ci à toutes les autres Puissances contractantes.

ARTICLE 59

The non-Signatory Powers who were represented at the International Peace Conference can adhere to the present Convention. For this purpose they must make known their adhesion to the Contracting Powers by a written notification addressed to the Netherlands Government, and communicated by it to all the other Contracting Powers.

ARTICLE 60

Les conditions auxquelles les Puissances qui n'ont pas été représentées à la Conférence Internationale de la Paix pourront adhérer à la présente Convention formeront l'objet d'une entente ultérieure entre les Puissances contractantes.

ARTICLE 60

The conditions on which the Powers who were not represented at the International Peace Conference can adhere to the present Convention shall form the subject of a subsequent Agreement among the Contracting Powers.

ARTICLE 61

S'il arrivait qu'une des Hautes Parties contractantes dénonçât la présente Convention, cette dénonciation ne produirait ses effets qu'un an après la notification faite par écrit au Gouvernement des Pays-Bas et communiquée

ARTICLE 61

In the event of one of the High Contracting Parties denouncing the present Convention, this denunciation would not take effect until a year after its notification made in writing to the Netherlands Government, and by it

immédiatement par celui-ci à toutes les autres Puissances contractantes.

Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi, les Plénipotentiaires ont signé la présente Convention et l'ont revêtue de leurs sceaux.

Fait à La Haye, le 29 Juillet, 1899, en un seul exemplaire qui restera déposé dans les archives du Gouvernement des Pays-Bas, et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances contractantes.

communicated at once to all the other Contracting Powers.

This denunciation shall only affect the notifying Power.

In faith of which the Plenipotentiaries have signed the present Convention and affixed their seals to it.

Done at The Hague, the 29th July, 1899, in a single copy, which shall remain in the archives of the Netherlands Government, and copies of it, duly certified, be sent through the diplomatic channel to the Contracting Powers.

APPENDIX II

CONVENTION FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES, OCTOBER 18, 1907

The cases brought under the Convention for the Pacific Settlement of International Disputes which was signed on July 29, 1899, showed wherein changes in the provisions of the Convention were desirable. Accordingly the Convention of 1899 which consisted of sixty-one articles was amplified at the Second Hague Peace Conference in 1907 and the Convention signed October 18, 1907, contained ninety-seven articles, the articles relating to arbitration by summary procedure (Articles 86-90) being entirely new. The provisions relating to Commissions of Inquiry were also much extended. It was admitted in 1899 that the articles relating to Commissions of Inquiry would necessarily be of a character more tentative than those relating to mediation or to arbitration. The changes made in 1907 were not in the principle involved in the idea of the Commission of Inquiry, but rather in methods of procedure. The new rules introduced were in part such as had been found serviceable in the work of the Commission of Inquiry which in 1905 had investigated the firing upon the Dogger Bank fishermen by the Russian Baltic fleet when on its way to the Far East in October, 1904. The additions and changes introduced in 1907 in the provisions relating to arbitration generally concerned procedure. Certain matters for which regulations had not been made or for which the rules had been found insufficient were provided for in the Convention of 1907, as in the clauses relating to expenses, language, meetings, evidence, and compromise. The new articles making provision for arbitration by summary procedure were adopted with the hope that thus there would be removed some of the objections to the more formal Permanent Court.

Forty-four states signed and nearly all the larger states have ratified this Convention of 1907. The cases brought before the Hague Tribunal since 1907 have been under the terms of this Convention.

CONVENTION POUR LE RÈGLEMENT PACIFIQUE DES CONFLITS INTERNATIONAUX

Sa Majesté l'Empereur d'Allemagne, roi de Prusse; le Président des États-Unis d'Amérique; le Président de la République Argentine; Sa Majesté l'Empereur d'Autriche, Roi de Bohême etc., et Roi Apostolique de Hongrie; Sa Majesté le Roi des Belges; le Président de la République de Bolivie; le Président de la République des États-Unis du Brésil; Son Altesse Royale le Prince de Bulgarie; le Président de la République de Chili; Sa Majesté l'Empereur de Chine; le Président de la République de Colombie; le Gouverneur Provisoire de la République de Cuba; Sa Majesté le Roi de Danemark; le Président de la République Dominicaine; le Président de la République de l'Equateur; Sa Majesté le Roi d'Espagne; le Président de la République Française; Sa Majesté le Roi du Royaume-Uni de Grande Bretagne et d'Irlande et des Territoires Britanniques au delà des Mers,

CONVENTION FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

His Majesty the German Emperor, King of Prussia; the President of the United States of America; the President of the Argentine Republic; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of the Belgians; the President of the Republic of Bolivia; the President of the Republic of the United States of Brazil; His Royal Highness the Prince of Bulgaria; the President of the Republic of Chile; His Majesty the Emperor of China; the President of the Republic of Colombia; the Provisional Governor of the Republic of Cuba; His Majesty the King of Denmark; the President of the Dominican Republic; the President of the Republic of Ecuador; His Majesty the King of Spain; the President of the French Republic; His Majesty the King of the United Kingdom of Great Britain and Ire-

Empereur des Indes; Sa Majesté le Roi des Hellènes; le Président de la République de Guatemala; le Président de la République d'Hatti; Sa Majesté le Roi d'Italie; Sa Majesté l'Empereur du Japon; Son Altesse Royale le Grand-Duc de Luxembourg, Duc de Nassau; le Président des États-Unis Mexicains; Son Altesse Royale le Prince de Monténégro; le Président de la République de Nicaragua; Sa Majesté le Roi de Norvège; le Président de la République de Panama; le Président de la République du Paraguay; Sa Majesté la Reine des Pays-Bas; le Président de la République du Pérou; Sa Majesté Impériale le Schah de Perse; Sa Majesté le Roi de Portugal et des Algarves, etc.; Sa Majesté le Roi de Roumanie; Sa Majesté l'Empereur de Toutes les Russies; le Président de la République du Salvador; Sa Majesté le Roi de Serbie; Sa Majesté le Roi de Siam; Sa Majesté le Roi de Suède; le Conseil Fédéral Suisse; Sa Majesté l'Empereur des Ottomans; le Président de la République Orientale de l'Uruguay; le Président des États-Unis de Vénézuéla:

land and of the British Dominions beyond the Seas, Emperor of India; His Majesty the King of the Hellenes; the President of the Republic of Guatemala; the President of the Republic of Hatti; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; the President of the United States of Mexico; His Royal Highness the Prince of Montenegro; the President of the Republic of Nicaragua; His Majesty the King of Norway; the President of the Republic of Panama; the President of the Republic of Paraguay; Her Majesty the Queen of the Netherlands; the President of the Republic of Peru; His Imperial Majesty the Shah of Persia; His Majesty the King of Portugal and of the Algarves, etc.; His Majesty the King of Roumania; His Majesty the Emperor of All the Russias; the President of the Republic of Salvador; His Majesty the King of Servia; His Majesty the King of Siam; His Majesty the King of Sweden; the Swiss Federal Council; His Majesty the Emperor of the Ottomans; the President of the Oriental Republic of Uruguay; the Presi-

dent of the United States of
Venezuela :

Animés de la ferme volonté de
concourir au maintien de la paix
générale ;

Résolus à favoriser de tous
leurs efforts le règlement amiable
des conflits internationaux ;

Reconnaissant la solidarité qui
unit les membres de la société
des nations civilisées ;

Voulant étendre l'empire du
droit et fortifier le sentiment de
la justice internationale ;

Convaincus que l'institution
permanente d'une juridiction ar-
bitrale accessible à tous, au sein
des Puissances indépendantes,
peut contribuer efficacement à ce
résultat ;

Considérant les avantages
d'une organisation générale et
régulière de la procédure arbi-
trale ;

Estimant avec l'Auguste Ini-
tiateur de la Conférence Inter-
nationale de la Paix qu'il im-
porte de consacrer dans un
accord international les principes
d'équité et de droit sur lesquels
reposent la sécurité des États et
le bien-être des peuples ;

Désireux, dans ce but, de

Animated by the sincere desire
to work for the maintenance of
general peace ;

Resolved to promote by all the
efforts in their power the friendly
settlement of international dis-
putes ;

Recognizing the solidarity
uniting the members of the
society of civilized nations ;

Desirous of extending the em-
pire of law and of strengthening
the appreciation of international
justice ;

Convinced that the perma-
nent institution of a Tribunal of
Arbitration accessible to all, in
the midst of independent powers,
will contribute effectively to this
result ;

Having regard to the advan-
tages attending the general and
regular organization of the pro-
cedure of arbitration ;

Sharing the opinion of the au-
gust initiator of the Interna-
tional Peace Conference that it
is expedient to record in an inter-
national agreement the prin-
ciples of equity and right on
which are based the security of
states and the welfare of
peoples ;

Being desirous, with this ob-

mieux assurer le fonctionnement pratique des Commissions d'enquête et des tribunaux d'arbitrage et de faciliter le recours à la justice arbitrale lorsqu'il s'agit de litiges de nature à comporter une procédure sommaire;

Ont jugé nécessaire de reviser sur certains points et de compléter l'œuvre de la Première Conférence de la Paix pour le règlement pacifique des conflits internationaux;

Les Hautes Parties contractantes ont résolu de conclure une nouvelle Convention à cet effet et ont nommé pour Leurs Plénipotentiaires, savoir:

[Dénomination des Plénipotentiaires]

Lesquels, après avoir déposé leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus de ce qui suit:

TITRE I. — DU MAINTIEN DE LA PAIX GÉNÉRALE

ARTICLE I

En vue de prévenir autant que possible le recours à la force dans les rapports entre les États, les Puissances contractantes conviennent d'employer tous leurs efforts pour assurer le règlement pacifique des différends internationaux.

ject, of ensuring the better working in practice of commissions of inquiry and tribunals of arbitration, and of facilitating recourse to arbitration in cases which allow of a summary procedure;

Have deemed it necessary to revise in certain particulars and to complete the work of the First Peace Conference for the pacific settlement of international disputes;

The high contracting parties have resolved to conclude a new convention for this purpose, and have appointed the following as their plenipotentiaries:

[Names of plenipotentiaries]

Who, after having deposited their full powers, found in good and due form, have agreed upon the following:

PART I. — THE MAINTENANCE OF GENERAL PEACE

ARTICLE I

With a view to obviating as far as possible recourse to force in the relations between states, the contracting powers agree to use their best efforts to ensure the pacific settlement of international differences.

TITRE II. — DES BONS OFFICES ET DE
LA MÉDIATION

PART II. — GOOD OFFICES AND
MEDIATION

ARTICLE 2

En cas de dissentiment grave ou de conflit, avant d'en appeler aux armes, les Puissances contractantes conviennent d'avoir recours, en tant que les circonstances le permettront, aux bons offices ou à la médiation d'une ou de plusieurs Puissances amies.

ARTICLE 2

In case of serious disagreement or dispute, before an appeal to arms, the contracting powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly powers.

ARTICLE 3

Indépendamment de ce recours, les Puissances contractantes jugent utile et désirable qu'une ou plusieurs Puissances étrangères au conflit offrent de leur propre initiative, en tant que les circonstances s'y prêtent, leurs bons offices ou leur médiation aux États en conflit.

Le droit d'offrir les bons offices ou la médiation appartient aux Puissances étrangères au conflit, même pendant le cours des hostilités.

L'exercice de ce droit ne peut jamais être considéré par l'une ou l'autre des Parties en litige comme un acte peu amical.

ARTICLE 3

Independently of this recourse, the contracting powers deem it expedient and desirable that one or more powers, strangers to the dispute, should, on their own initiative and as far as circumstances may allow, offer their good offices or mediation to the states at variance.

Powers strangers to the dispute, have the right to offer good offices or mediation even during the course of hostilities.

The exercise of this right can never be regarded by either of the parties in dispute as an unfriendly act.

ARTICLE 4

Le rôle du médiateur consiste à concilier les prétentions opposées et à apaiser les ressentiments qui peuvent s'être produits entre les États en conflit.

ARTICLE 4

The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the states at variance.

ARTICLE 5

Les fonctions du médiateur cessent du moment où il est constaté, soit par l'une des Parties en litige, soit par le médiateur lui-même, que les moyens de conciliation proposés par lui ne sont pas acceptés.

ARTICLE 5

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

ARTICLE 6

Les bons offices et la médiation, soit sur le recours des Parties en conflit, soit sur l'initiative des Puissances étrangères au conflit, ont exclusivement le caractère de conseil et n'ont jamais force obligatoire.

ARTICLE 6

Good offices and mediation undertaken either at the request of the parties in dispute or on the initiative of powers strangers to the dispute have exclusively the character of advice, and never have binding force.

ARTICLE 7

L'acceptation de la médiation ne peut avoir pour effet, sauf convention contraire, d'interrompre, de retarder ou d'entraver la mobilisation et autres mesures préparatoires à la guerre.

Si elle intervient après l'ouverture des hostilités, elle n'interrompt pas, sauf convention contraire, les opérations militaires en cours.

ARTICLE 7

The acceptance of mediation can not, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If it takes place after the commencement of hostilities, the military operations in progress are not interrupted in the absence of an agreement to the contrary.

ARTICLE 8

Les Puissances contractantes sont d'accord pour recommander l'application, dans les circonstances qui le permettent, d'une médiation spéciale sous la forme suivante:

ARTICLE 8

The contracting powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:

En cas de différend grave compromettant la paix, les États en conflit choisissent respectivement une Puissance à laquelle ils confient la mission d'entrer en rapport direct avec la Puissance choisie d'autre part, à l'effet de prévenir la rupture des relations pacifiques.

Pendant la durée de ce mandat dont le terme, sauf stipulation contraire, ne peut excéder trente jours, les États en litige cessent tout rapport direct au sujet du conflit, lequel est considéré comme déferé exclusivement aux Puissances médiatrices. Celles-ci doivent appliquer tous leurs efforts à régler le différend.

En cas de rupture effective des relations pacifiques, ces Puissances demeurent chargées de la mission commune de profiter de toute occasion pour rétablir la paix.

In case of a serious difference endangering peace, the states at variance choose respectively a power, to which they intrust the mission of entering into direct communication with the power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, can not exceed thirty days, the states in dispute cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating powers, which must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these powers are charged with the joint task of taking advantage of any opportunity to restore peace.

TITRE III. — DES COMMISSIONS INTERNATIONALES D'ENQUÊTE

ARTICLE 9

Dans les litiges d'ordre international n'engageant ni l'honneur ni des intérêts essentiels et provenant d'une divergence d'appréciation sur des points de fait, les Puissances contractantes jugent utile et désirable que les Parties qui n'auraient pu se mettre d'accord par les voies di-

PART III. — INTERNATIONAL COMMISSIONS OF INQUIRY

ARTICLE 9

In disputes of an international nature involving neither honor nor vital interests, and arising from a difference of opinion on points of fact, the contracting powers deem it expedient and desirable that the parties who have not been able to come to an agreement by means

plomatiques instituent, en tant que les circonstances le permettront, une Commission internationale d'enquête chargée de faciliter la solution de ces litiges en éclaircissant, par un examen impartial et consciencieux, les questions de fait.

ARTICLE 10

Les Commissions internationales d'enquête sont constituées par convention spéciale entre les Parties en litige.

La convention d'enquête précise les faits à examiner; elle détermine le mode et le délai de formation de la Commission et l'étendue des pouvoirs des commissaires.

Elle détermine également, s'il y a lieu, le siège de la Commission et la faculté de se déplacer, la langue dont la Commission fera usage et celles dont l'emploi sera autorisé devant elle, ainsi que la date à laquelle chaque Partie devra déposer son exposé des faits, et généralement toutes les conditions dont les Parties sont convenues.

Si les Parties jugent nécessaire de nommer des assesseurs la, convention d'enquête détermine le mode de leur désignation et l'étendue de leurs pouvoirs.

of diplomacy, should, as far as circumstances allow, institute an international commission of inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

ARTICLE 10

International commissions of inquiry are constituted by special agreement between the parties in dispute.

The inquiry convention defines the facts to be examined; it determines the mode and time in which the commission is to be formed and the extent of the powers of the commissioners.

It also determines, if there is need, where the commission is to sit, and whether it may remove to another place, the language the commission shall use and the languages the use of which shall be authorized before it, as well as the date on which each party must deposit its statement of facts, and, generally speaking, all the conditions upon which the parties have agreed.

If the parties consider it necessary to appoint assessors, the convention of inquiry shall determine the mode of their selection and the extent of their powers.

ARTICLE 11

Si la convention d'enquête n'a pas désigné le siège de la Commission, celle-ci siégera à La Haye.

Le siège une fois fixé ne peut être changé par la Commission qu'avec l'assentiment des Parties.

Si la convention d'enquête n'a pas déterminé les langues à employer, il en est décidé par la Commission.

ARTICLE 11

If the inquiry convention has not determined where the commission is to sit, it will sit at The Hague.

The place of meeting, once fixed, can not be altered by the commission except with the assent of the parties.

If the inquiry convention has not determined what languages are to be employed, the question shall be decided by the commission.

ARTICLE 12

Sauf stipulation contraire, les Commissions d'enquête sont formées de la manière déterminée par les Articles 45 et 57 de la présente Convention.

ARTICLE 12

Unless an undertaking is made to the contrary, commissions of inquiry shall be formed in the manner determined by articles 45 and 57 of the present convention.

ARTICLE 13

En cas de décès, de démission ou d'empêchement, pour quelque cause que ce soit, de l'un des commissaires, ou éventuellement de l'un des assesseurs, il est pourvu à son remplacement selon le mode fixé pour sa nomination.

ARTICLE 13

Should one of the commissioners or one of the assessors, should there be any, either die, or resign, or be unable for any reason whatever to discharge his functions, the same procedure is followed for filling the vacancy as was followed for appointing him.

ARTICLE 14

Les Parties ont le droit de nommer auprès de la Commission d'enquête des agents spéciaux avec la mission de Les représenter et de servir d'intermédiaires entre Elles et la Commission.

ARTICLE 14

The parties are entitled to appoint special agents to attend the commission of inquiry, whose duty it is to represent them and to act as intermediaries between them and the commission.

Elles sont, en outre, autorisées à charger des conseils ou avocats nommés par elles, d'exposer et de soutenir leurs intérêts devant la Commission.

They are further authorized to engage counsel or advocates, appointed by themselves, to state their case and uphold their interests before the commission.

ARTICLE 15

Le Bureau International de la Cour permanente d'arbitrage sert de greffe aux Commissions qui siègent à La Haye, et mettra ses locaux et son organisation à la disposition des Puissances contractantes pour le fonctionnement de la Commission d'enquête.

ARTICLE 15

The International Bureau of the Permanent Court of Arbitration acts as registry for the commissions which sit at The Hague, and it shall place its offices and staff at the disposal of the contracting powers for the use of the commission of inquiry.

ARTICLE 16

- Si la Commission siège ailleurs qu'à La Haye, elle nomme un Secrétaire Général dont le bureau lui sert de greffe.

Le greffe est chargé, sous l'autorité du Président, de l'organisation matérielle des séances de la Commission, de la rédaction des procès-verbaux et, pendant le temps de l'enquête, de la garde des archives qui seront ensuite versées au Bureau International de La Haye.

ARTICLE 16

If the commission meets elsewhere than at The Hague, it appoints a secretary general, whose office serves as registry.

It is the function of the registry, under the control of the President, to make the necessary arrangements for the sittings of the commission, the preparation of the minutes, and, while the inquiry lasts, for the charge of the archives, which shall subsequently be transferred to the International Bureau at The Hague.

ARTICLE 17

En vue de faciliter l'institution et le fonctionnement des Commissions d'enquête, les

ARTICLE 17

In order to facilitate the constitution and working of commissions of inquiry, the con-

Puissances contractantes recommandent les règles suivantes qui seront applicables à la procédure d'enquête en tant que les Parties n'adopteront pas d'autres règles.

tracting powers recommend the following rules, which shall be applicable to the inquiry procedure in so far as the parties do not adopt other rules.

ARTICLE 18

La Commission règlera les détails de la procédure non prévus dans la convention spéciale d'enquête ou dans la présente Convention, et procèdera à toutes les formalités que comporte l'administration des preuves.

ARTICLE 18

The commission shall settle the details of the procedure not covered by the special inquiry convention or the present convention, and shall arrange all the formalities required for dealing with the evidence.

ARTICLE 19

L'enquête a lieu contradictoirement.

Aux dates prévues, chaque Partie communique à la Commission et à l'autre Partie les exposés des faits, s'il y a lieu, et, dans tous les cas, les actes, pièces et documents qu'Elle juge utiles à la découverte de la vérité, ainsi que la liste des témoins et des experts qu'elle désire faire entendre.

ARTICLE 19

On the inquiry both sides must be heard.

At the dates fixed, each party communicates to the commission and to the other party the statements of facts, if any, and, in all cases, the instruments, papers, and documents which it considers useful for ascertaining the truth, as well as the list of witnesses and experts whose evidence it wishes to be heard.

ARTICLE 20

La Commission a la faculté, avec l'assentiment des Parties, de se transporter momentanément sur les lieux où elle juge utile de recourir à ce moyen d'information ou d'y déléguer un ou plusieurs de ses membres. L'autori-

ARTICLE 20

The commission is entitled, with the assent of the powers, to move temporarily to any place where it considers it may be useful to have recourse to this means of inquiry or to send one or more of its members.

sation de l'État sur le territoire duquel il doit être procédé à cette information devra être obtenue.

Permission must be obtained from the state on whose territory it is proposed to hold the inquiry.

ARTICLE 21

Toutes constatations matérielles, et toutes visites des lieux doivent être faites en présence des agents et conseils des Parties ou eux dûment appelés.

ARTICLE 21

Every investigation, and every examination of a locality, must be made in the presence of the agents and counsel of the parties or after they have been duly summoned.

ARTICLE 22

La Commission a le droit de solliciter de l'une ou l'autre Partie telles explications ou informations qu'elle juge utiles.

ARTICLE 22

The commission is entitled to ask from either party for such explanations and information as it considers necessary.

ARTICLE 23

Les Parties s'engagent à fournir à la Commission d'enquête, dans la plus large mesure qu'Elles jugeront possible, tous les moyens et toutes les facilités nécessaires pour la connaissance complète et l'appréciation exacte des faits en question.

ARTICLE 23

The parties undertake to supply the commission of inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with, and to accurately understand, the facts in question.

Elles s'engagent à user des moyens dont Elles disposent d'après leur législation intérieure, pour assurer la comparution des témoins ou des experts se trouvant sur leur territoire et cités devant la Commission.

They undertake to make use of the means at their disposal, under their municipal law, to ensure the appearance of the witnesses or experts who are in their territory and have been summoned before the commission.

Si ceux-ci ne peuvent comparaître devant la Commission, Elles feront procéder à leur audition devant leurs autorités compétentes.

If the witnesses or experts are unable to appear before the commission, the parties will arrange for their evidence to be taken before the qualified officials of their own country.

ARTICLE 24

Pour toutes les notifications que la Commission aurait à faire sur le territoire d'une tierce Puissance contractante, la Commission s'adressera directement au Gouvernement de cette Puissance. Il en sera de même s'il s'agit de faire procéder sur place à l'établissement de tous moyens de preuve.

Les requêtes adressées à cet effet seront exécutées suivant les moyens dont la Puissance requise dispose d'après Sa législation intérieure. Elles ne peuvent être refusées que si cette Puissance les juge de nature à porter atteinte à Sa souveraineté ou à Sa sécurité.

La Commission aura aussi toujours la faculté de recourir à l'intermédiaire de la Puissance sur le territoire de laquelle elle a son siège.

ARTICLE 25

Les témoins et les experts sont appelés à la requête des Parties ou d'office par la Commission, et, dans tous les cas, par l'intermédiaire du Gouvernement de l'État sur le territoire duquel il se trouvent.

Les témoins sont entendus, successivement et séparément, en présence des agents et des conseils et dans un ordre à fixer par la Commission.

ARTICLE 24

For all notices to be served by the commission in the territory of a third contracting power, the commission shall apply direct to the government of the said power. The same rule applies in the case of steps being taken on the spot to procure evidence.

The requests for this purpose are to be executed so far as the means at the disposal of the power applied to under its municipal law allow. They can not be rejected unless the power in question considers they are calculated to impair its sovereign rights or its safety.

The commission will equally be always entitled to act through the power on whose territory it sits.

ARTICLE 25

The witnesses and experts are summoned on the request of the parties or by the commission of its own motion, and, in every case, through the government of the state in whose territory they are.

The witnesses are heard in succession and separately, in the presence of the agents and counsel, and in the order fixed by the commission.

ARTICLE 26

L'interrogatoire des témoins est conduit par le Président.

Les membres de la Commission peuvent néanmoins poser à chaque témoin les questions qu'ils croient convenables pour éclaircir ou compléter sa déposition, ou pour se renseigner sur tout ce qui concerne le témoin dans les limites nécessaires à la manifestation de la vérité.

Les agents et les conseils des Parties ne peuvent interrompre le témoin dans sa déposition, ni lui faire aucune interpellation directe, mais peuvent demander au Président de poser au témoin telles questions complémentaires qu'ils jugent utiles.

ARTICLE 27

Le témoin doit déposer sans qu'il lui soit permis de lire aucun projet écrit. Toutefois, il peut être autorisé par le Président à s'aider de notes ou documents si la nature des faits rapportés en nécessite l'emploi.

ARTICLE 28

Procès-verbal de la déposition du témoin est dressé séance tenante et lecture en est donnée au témoin. Le témoin peut y faire tels changements et additions que bon lui semble et qui

ARTICLE 26

The examination of witnesses is conducted by the President.

The members of the commission may, however, put to each witness questions which they consider likely to throw light on and complete his evidence, or get information on any point concerning the witness within the limits of what is necessary in order to get at the truth.

The agents and counsel of the parties may not interrupt the witness when he is making his statement, nor put any direct question to him, but they may ask the President to put such additional questions to the witness as they think expedient.

ARTICLE 27

The witness must give his evidence without being allowed to read any written draft. He may, however, be permitted by the President to consult notes or documents if the nature of the facts referred to necessitates their employment.

ARTICLE 28

A minute of the evidence of the witness is drawn up forthwith and read to the witness. The latter may make such alterations and additions as he thinks necessary, which will be re-

seront consignés à la suite de sa déposition.

Lecture faite au témoin de l'ensemble de sa déposition, le témoin est requis de signer.

corded at the end of his statement.

When the whole of his statement has been read to the witness, he is asked to sign it.

ARTICLE 29

Les agents sont autorisés, au cours ou à la fin de l'enquête, à présenter par écrit à la Commission et à l'autre Partie tels dires, réquisitions ou résumés de fait, qu'ils jugent utiles à la découverte de la vérité.

ARTICLE 29

The agents are authorized, in the course of or at the close of the inquiry, to present in writing to the commission and to the other party such statements, requisitions, or summaries of the facts as they consider useful for ascertaining the truth.

ARTICLE 30

Les délibérations de la Commission ont lieu à huis clos et restent secrètes.

Toute décision est prise à la majorité des membres de la Commission.

Le refus d'un membre de prendre part au vote doit être constaté dans le procès-verbal.

ARTICLE 30

The commission considers its decisions in private and the proceedings are secret.

All questions are decided by a majority of the members of the commission.

If a member declines to vote, the fact must be recorded in the minutes.

ARTICLE 31

Les séances de la Commission ne sont publiques et les procès-verbaux et documents de l'enquête ne sont rendus publics qu'en vertu d'une décision de la Commission, prise avec l'assentiment des Parties.

ARTICLE 31

The sittings of the commission are not public, nor the minutes and documents connected with the inquiry published except in virtue of a decision of the commission taken with the consent of the parties.

ARTICLE 32

Les Parties ayant présenté tous les éclaircissements et preuves,

ARTICLE 32

After the parties have presented all the explanations and

tous les témoins ayant été entendus, le Président prononce la clôture de l'enquête et la Commission s'ajourne pour délibérer et rédiger son rapport.

ARTICLE 33

Le rapport est signé par tous les membres de la Commission.

Si un des membres refuse de signer, mention en est faite; le rapport reste néanmoins valable.

ARTICLE 34

Le rapport de la Commission est lu en séance publique, les agents et les conseils des Parties présents ou dûment appelés.

Un exemplaire du rapport est remis à chaque Partie.

ARTICLE 35

Le rapport de la Commission, limité à la constatation des faits, n'a nullement le caractère d'une sentence arbitrale. Il laisse aux Parties une entière liberté pour la suite à donner à cette constatation.

ARTICLE 36

Chaque Partie supporte ses propres frais et une part égale des frais de la Commission.

evidence, and the witnesses have all been heard, the President declares the inquiry terminated, and the commission adjourns to deliberate and to draw up its report.

ARTICLE 33

The report is signed by all the members of the commission.

If one of the members refuses to sign, the fact is mentioned; but the validity of the report is not affected.

ARTICLE 34

The report of the commission is read at a public sitting, the agents and counsel of the parties being present or duly summoned.

A copy of the report is given to each party.

ARTICLE 35

The report of the commission is limited to a statement of facts, and has in no way the character of an award. It leaves to the parties entire freedom as to the effect to be given to the statement.

ARTICLE 36

Each party pays its own expenses and an equal share of the expenses incurred by the commission.

TITRE IV. — DE L'ARBITRAGE INTERNATIONAL

PART IV. — INTERNATIONAL ARBITRATION

CHAPITRE I. — *De la Justice arbitrale*

CHAPTER I. — *The System of Arbitration*

ARTICLE 37

L'arbitrage international a pour objet le règlement de litiges entre les États par des juges de leur choix et sur la base du respect du droit.

Le recours à l'arbitrage implique l'engagement de se soumettre de bonne foi à la sentence.

ARTICLE 37

International arbitration has for its object the settlement of disputes between states by judges of their own choice, and on the basis of respect for law.

Recourse to arbitration implies an engagement to submit in good faith to the award.

ARTICLE 38

Dans les questions d'ordre juridique, et en premier lieu, dans les questions d'interprétation ou d'application des Conventions internationales, l'arbitrage est reconnu par les Puissances contractantes comme le moyen le plus efficace et en même temps le plus équitable de régler les litiges qui n'ont pas été résolus par les voies diplomatiques.

En conséquence, il serait désirable que, dans les litiges sur les questions susmentionnées, les Puissances contractantes eussent, le cas échéant, recours à l'arbitrage, en tant que les circonstances le permettraient.

ARTICLE 38

In questions of a legal nature, and especially in the interpretation or application of international conventions, arbitration is recognized by the contracting powers as the most effective and at the same time, the most equitable means of settling disputes which diplomacy has failed to settle.

Consequently, it would be desirable that, in disputes about the above-mentioned questions, the contracting powers should, if the case arose, have recourse to arbitration, in so far as circumstances permit.

ARTICLE 39

La Convention d'arbitrage est conclue pour des contestations déjà nées ou pour des contestations éventuelles.

ARTICLE 39

The arbitration convention is concluded for questions already existing or for questions which may arise eventually.

Elle peut concerner tout litige ou seulement les litiges d'une catégorie déterminée.

It may embrace any dispute or only disputes of a certain category.

ARTICLE 40

Indépendamment des Traités généraux ou particuliers qui stipulent actuellement l'obligation du recours à l'arbitrage pour les Puissances contractantes, ces Puissances se réservent de conclure des accords nouveaux, généraux ou particuliers, en vue d'étendre l'arbitrage obligatoire à tous les cas qu'Elles jugeront possible de lui soumettre.

ARTICLE 40

Independently of general or private treaties expressly stipulating recourse to arbitration as obligatory on the contracting powers, the said powers reserve to themselves the right of concluding new agreements, general or particular, with a view to extending compulsory arbitration to all cases which they may consider it possible to submit to it.

CHAPITRE II. — *De la Cour permanente d'arbitrage*CHAPTER II. — *The Permanent Court of Arbitration*

ARTICLE 41

Dans le but de faciliter le recours immédiat à l'arbitrage pour les différends internationaux qui n'ont pu être réglés par la voie diplomatique, les Puissances contractantes s'engagent à maintenir, telle qu'elle a été établie par la Première Conférence de la Paix, la Cour permanente d'arbitrage, accessible en tout temps et fonctionnant, sauf stipulation contraire des Parties, conformément aux règles de procédure insérées dans la présente Convention.

ARTICLE 41

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the contracting powers undertake to maintain the Permanent Court of Arbitration, as established by the First Peace Conference, accessible at all times, and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present convention.

ARTICLE 42

La Cour permanente est compétente pour tous les cas d'arbi-

ARTICLE 42

The Permanent Court is competent for all arbitration cases,

trage, à moins qu'il n'y ait entente entre les Parties pour l'établissement d'une juridiction spéciale.

unless the parties agree to institute a special tribunal.

ARTICLE 43

La Cour permanente a son siège à La Haye.

Un Bureau International sert de greffe à la Cour; il est l'intermédiaire des communications relatives aux réunions de celle-ci; il a la garde des archives et la gestion de toutes les affaires administratives.

Les Puissances contractantes s'engagent à communiquer au Bureau, aussitôt que possible, une copie certifiée conforme de toute stipulation d'arbitrage intervenue entre Elles et de toute sentence arbitrale Les concernant et rendue par des juridictions spéciales.

Elles s'engagent à communiquer de même au Bureau les lois, règlements et documents constatant éventuellement l'exécution des sentences rendues par la Cour.

ARTICLE 44

Chaque Puissance contractante désigne quatre personnes au plus, d'une compétence reconnue dans les questions de droit international, jouissant de la plus haute considération morale et disposées à accepter les fonctions d'arbitre.

ARTICLE 43

The Permanent Court sits at The Hague.

An International Bureau serves as registry for the court. It is the channel for communications relative to the meetings of the court; it has charge of the archives and conducts all the administrative business.

The contracting powers undertake to communicate to the Bureau, as soon as possible, a certified copy of any conditions of arbitration arrived at between them, and of any award concerning them delivered by a special tribunal.

They likewise undertake to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the awards given by the court.

ARTICLE 44

Each contracting power selects four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrator.

Les personnes ainsi désignées sont inscrites, au titre de Membres de la Cour, sur une liste qui sera notifiée à toutes les Puissances contractantes par les soins du Bureau.

Toute modification à la liste des arbitres est portée, par les soins du Bureau, à la connaissance des Puissances contractantes.

Deux ou plusieurs Puissances peuvent s'entendre pour la désignation en commun d'un ou de plusieurs Membres.

La même personne peut être désignée par des Puissances différentes.

Les Membres de la Cour sont nommés pour un terme de six ans. Leur mandat peut être renouvelé.

En cas de décès ou de retraite d'un Membre de la Cour, il est pourvu à son remplacement selon le mode fixé pour sa nomination, et pour une nouvelle période de six ans.

ARTICLE 45

Lorsque les Puissances contractantes veulent s'adresser à la Cour permanente pour le règlement d'un différend survenu entre Elles, le choix des arbitres appelés à former le Tribunal compétent pour statuer sur ce différend, doit être fait dans la liste générale des Membres de la Cour.

The persons thus selected are inscribed, as members of the court, in a list which shall be notified to all the contracting powers by the Bureau.

Any alteration in the list of arbitrators is brought by the Bureau to the knowledge of the contracting powers.

Two or more powers may agree on the selection in common of one or more members.

The same person can be selected by different powers.

The members of the court are appointed for a term of six years. These appointments are renewable.

Should a member of the court die or resign, the same procedure is followed for filling the vacancy as was followed for appointing him. In this case the appointment is made for a fresh period of six years.

ARTICLE 45

When the contracting powers wish to have recourse to the Permanent Court for the settlement of a difference which has arisen between them, the arbitrators called upon to form the tribunal with jurisdiction to decide this difference must be chosen from the general list of members of the court.

A défaut de constitution du Tribunal arbitral par l'accord des Parties, il est procédé de la manière suivante :

Chaque Partie nomme deux arbitres, dont un seulement peut être son national ou choisi parmi ceux qui ont été désignés par Elle comme Membres de la Cour permanente. Ces arbitres choisissent ensemble un surarbitre.

En cas de partage des voix, le choix du surarbitre est confié à une Puissance tierce, désignée de commun accord par les Parties.

Si l'accord ne s'établit pas à ce sujet, chaque Partie désigne une Puissance différente et le choix du surarbitre est fait de concert par les Puissances ainsi désignées.

Si, dans un délai de deux mois, ces deux Puissances n'ont pu tomber d'accord, chacune d'Elles présente deux candidats pris sur la liste des Membres de la Cour permanente, en dehors des Membres désignés par les Parties et n'étant les nationaux d'aucune d'Elles. Le sort détermine lequel des candidats ainsi présentés sera le surarbitre.

ARTICLE 46

Dès que le Tribunal est composé, les Parties notifient au Bureau leur décision de s'ad-

Failing the direct agreement of the parties on the composition of the Arbitration Tribunal, the following course shall be pursued :

Each party appoints two arbitrators, of whom one only can be its national, or chosen from among the persons who have been selected by it as members of the Permanent Court. These arbitrators together choose an umpire.

If the votes are equally divided, the choice of the umpire is intrusted to a third power, selected by the parties by common accord.

If an agreement is not arrived at on this subject each party selects a different power, and the choice of the umpire is made in concert by the powers thus selected.

If, within two months' time, these two powers can not come to an agreement, each of them presents two candidates taken from the list of members of the Permanent Court, exclusive of the members selected by the parties and not being nationals of either of them. Drawing lots determines which of the candidates thus presented shall be umpire.

ARTICLE 46

The tribunal being thus composed, the parties notify to the Bureau their determi-

resser à la Cour, le texte de leur compromis, et les noms des arbitres.

Le Bureau communique sans délai à chaque arbitre le compromis et les noms des autres Membres du Tribunal.

Le Tribunal se réunit à la date fixée par les Parties. Le Bureau pourvoit à son installation.

Les Membres du Tribunal, dans l'exercice de leurs fonctions et en dehors de leur pays, jouissent des privilèges et immunités diplomatiques.

ARTICLE 47

Le Bureau est autorisé à mettre ses locaux et son organisation à la disposition des Puissances contractantes pour le fonctionnement de toute juridiction spéciale d'arbitrage.

La juridiction de la Cour permanente peut être étendue, dans les conditions prescrites par les règlements, aux litiges existant entre des Puissances non contractantes ou entre des Puissances contractantes et des Puissances non contractantes, si les Parties sont convenues de recourir à cette juridiction.

ARTICLE 48

Les Puissances contractantes considèrent comme un devoir, dans les cas où un conflit aigu

nation to have recourse to the court, the text of their *compromis*, and the names of the arbitrators.

The Bureau communicates without delay to each arbitrator the *compromis*, and the names of the other members of the tribunal.

The tribunal assembles at the date fixed by the parties. The Bureau makes the necessary arrangements for the meeting.

The members of the tribunal, in the exercise of their duties and out of their own country, enjoy diplomatic privileges and immunities.

ARTICLE 47

The Bureau is authorized to place its offices and staff at the disposal of the contracting powers for the use of any special board of arbitration.

The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between noncontracting powers, or between contracting powers and noncontracting powers, if the parties are agreed on recourse to this tribunal.

ARTICLE 48

The contracting powers consider it their duty, if a serious dispute threatens to break out

menacerait d'éclater entre deux ou plusieurs d'entre Elles, de rappeler à celles-ci que la Cour permanente leur est ouverte.

En conséquence, Elles déclarent que le fait de rappeler aux Parties en conflit les dispositions de la présente Convention, et le conseil donné, dans l'intérêt supérieur de la paix, de s'adresser à la Cour permanente, ne peuvent être considérés que comme actes de bons offices.

En cas de conflit entre deux Puissances, l'une d'Elles pourra toujours adresser au Bureau International une note contenant sa déclaration qu'Elle serait disposée à soumettre le différend à un arbitrage.

Le Bureau devra porter aussitôt la déclaration à la connaissance de l'autre Puissance.

ARTICLE 49

Le Conseil administratif permanent, composé des Représentants diplomatiques des Puissances contractantes accrédités à La Haye et du Ministre des Affaires Étrangères des Pays-Bas, qui remplit les fonctions de Président, a la direction et le contrôle du Bureau International.

Le Conseil arrête son règlement d'ordre ainsi que tous autres règlements nécessaires.

Il décide toutes les questions administratives qui pourraient

between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as friendly actions.

In case of dispute between two powers, one of them can always address to the International Bureau a note containing a declaration that it would be ready to submit the dispute to arbitration.

The Bureau must at once inform the other power of the declaration.

ARTICLE 49

The Permanent Administrative Council, composed of the diplomatic representatives of the contracting powers accredited to The Hague and of the Netherlands Minister for Foreign Affairs, who will act as President, is charged with the direction and control of the International Bureau.

The Council settles its rules of procedure and all other necessary regulations.

It decides all questions of administration which may arise

surgir touchant le fonctionnement de la Cour.

Il a tout pouvoir quant à la nomination, la suspension ou la révocation des fonctionnaires et employés du Bureau.

Il fixe les traitements et salaires, et contrôle la dépense générale.

La présence de neuf membres dans les réunions dûment convoquées suffit pour permettre au Conseil de délibérer valablement. Les décisions sont prises à la majorité des voix.

Le Conseil communique sans délai aux Puissances contractantes les règlements adoptés par lui. Il leur présente chaque année un rapport sur les travaux de la Cour, sur le fonctionnement des services administratifs et sur les dépenses. Le rapport contient également un résumé du contenu essentiel des documents communiqués au Bureau par les Puissances en vertu de l'article 43 alinéas 3 et 4.

ARTICLE 50

Les frais du Bureau seront supportés par les Puissances contractantes dans la proportion établie pour le Bureau international de l'Union postale universelle.

Les frais à la charge des Puissances adhérentes seront comptés à partir du jour où leur adhésion produit ses effets.

with regard to the operations of the court.

It has entire control over the appointment, suspension, or dismissal of the officials and employés of the Bureau.

It fixes the payments and salaries, and controls the general expenditure.

At meetings duly summoned the presence of nine members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the contracting powers without delay the regulations adopted by it. It furnishes them with an annual report on the labors of the court, the working of the administration, and the expenditure. The report likewise contains a résumé of what is important in the documents communicated to the Bureau by the powers in virtue of article 43, paragraphs 3 and 4.

ARTICLE 50

The expenses of the Bureau shall be borne by the contracting powers in the proportion fixed for the International Bureau of the Universal Postal Union.

The expenses to be charged to the adhering powers shall be reckoned from the date on which their adhesion comes into force.

CHAPITRE III. — *De la procédure arbitrale*

CHAPTER III. — *Arbitration Procedure*

ARTICLE 51

En vue de favoriser le développement de l'arbitrage, les Puissances contractantes ont arrêté les règles suivantes qui sont applicables à la procédure arbitrale, en tant que les Parties ne sont pas convenues d'autres règles.

ARTICLE 51

With a view to encouraging the development of arbitration, the contracting powers have agreed on the following rules, which are applicable to arbitration procedure, unless other rules have been agreed on by the parties.

ARTICLE 52

Les Puissances qui recourent à l'arbitrage signent un compromis dans lequel sont déterminés l'objet du litige, le délai de nomination des arbitres, la forme, l'ordre et les délais dans lesquels la communication visée par l'article 63 devra être faite, et le montant de la somme que chaque Partie aura à déposer à titre d'avance pour les frais.

ARTICLE 52

The powers which have recourse to arbitration sign a *compromis*, in which the subject of the dispute is clearly defined, the time allowed for appointing arbitrators, the form, order, and time in which the communication referred to in article 63 must be made, and the amount of the sum which each party must deposit in advance to defray the expenses.

Le compromis détermine également, s'il y a lieu, le mode de nomination des arbitres, tous pouvoirs spéciaux éventuels du Tribunal, son siège, la langue dont il fera usage et celles dont l'emploi sera autorisé devant lui, et généralement toutes les conditions dont les Parties sont convenues.

The *compromis* likewise defines, if there is occasion, the manner of appointing arbitrators, any special powers which may eventually belong to the Tribunal, where it shall meet, the language it shall use, and the languages the employment of which shall be authorized before it, and, generally speaking, all the conditions on which the parties are agreed.

ARTICLE 53

La Cour permanente est compétente pour l'établissement du

ARTICLE 53

The Permanent Court is competent to settle the *com-*

compromis, si les Parties sont d'accord pour s'en remettre à elle.

Elle est également compétente, même si la demande est faite seulement par l'une des Parties, après qu'un accord par la voie diplomatique a été vainement essayé, quand il s'agit :

1°. d'un différend rentrant dans un Traité d'arbitrage général conclu ou renouvelé après la mise en vigueur de cette Convention et qui prévoit pour chaque différend un compromis et n'exclut pour l'établissement de ce dernier ni explicitement ni implicitement la compétence de la Cour. Toutefois, le recours à la Cour n'a pas lieu si l'autre Partie déclare qu'à son avis le différend n'appartient pas à la catégorie des différends à soumettre à un arbitrage obligatoire, à moins que le Traité d'arbitrage ne confère au Tribunal arbitral le pouvoir de décider cette question préalable;

2°. d'un différend provenant de dettes contractuelles réclamées à une Puissance par une autre Puissance comme dues à ses nationaux, et pour la solution duquel l'offre d'arbitrage a été acceptée. Cette disposition n'est pas applicable si l'acceptation a été subordonnée à la condition

promis, if the parties are agreed to have recourse to it for the purpose.

It is similarly competent, even if the request is only made by one of the parties, when all attempts to reach an understanding through the diplomatic channel have failed, in the case of :

1. A dispute covered by a general treaty of arbitration concluded or renewed after the present convention has come into force, and providing for a *compromis* in all disputes and not either explicitly or implicitly excluding the settlement of the *compromis* from the competence of the court. Recourse can not, however, be had to the court if the other party declares that in its opinion the dispute does not belong to the category of disputes which can be submitted to compulsory arbitration, unless the treaty of arbitration confers upon the Arbitration Tribunal the power of deciding this preliminary question.

2. A dispute arising from contract debts claimed from one power by another power as due to its nationals, and for the settlement of which the offer of arbitration has been accepted. This arrangement is not applicable if acceptance is subject to the condition that the *compromis*

que le compromis soit établi selon un autre mode.

should be settled in some other way.

ARTICLE 54

Dans les cas prévus par l'article précédent, le compromis sera établi par une commission composée de cinq membres désignés de la manière prévue à l'article 45 alinéas 3 à 6.

Le cinquième membre est de droit Président de la commission.

ARTICLE 54

In the cases contemplated in the preceding article, the *compromis* shall be settled by a commission consisting of five members selected in the manner arranged for in article 45, paragraphs 3 to 6.

The fifth member is President of the commission *ex officio*.

ARTICLE 55

Les fonctions arbitrales peuvent être conférées à un arbitre unique ou à plusieurs arbitres désignés par les Parties à leur gré, ou choisis par Elles parmi les Membres de la Cour permanente d'arbitrage établie par la présente Convention.

A défaut de constitution du Tribunal par l'accord des Parties, il est procédé de la manière indiquée à l'article 45 alinéas 3 à 6.

ARTICLE 55

The duties of arbitrator may be conferred on one arbitrator alone or on several arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present convention.

Failing the constitution of the tribunal by direct agreement between the parties, the course referred to in article 45, paragraphs 3 to 6, is followed.

ARTICLE 56

Lorsqu'un Souverain ou un Chef d'État est choisi pour arbitre, la procédure arbitrale est réglée par Lui.

ARTICLE 56

When a sovereign or the chief of a state is chosen as arbitrator, the arbitration procedure is settled by him.

ARTICLE 57

Le surarbitre est de droit Président du Tribunal.

Lorsque le Tribunal ne comprend pas de surarbitre, il nomme lui-même son Président.

ARTICLE 57

The umpire is President of the tribunal *ex officio*.

When the tribunal does not include an umpire, it appoints its own President.

ARTICLE 58

En cas d'établissement du compromis par une commission, telle qu'elle est visée à l'article 54, et sauf stipulation contraire, la commission elle même formera le Tribunal d'arbitrage.

ARTICLE 59

En cas de décès, de démission au d'empêchement, pour quelque cause que ce soit, de l'un des arbitres, il est pourvu à son remplacement selon le mode fixé pour sa nomination.

ARTICLE 60

A défaut de désignation par les Parties, le Tribunal siège à La Haye.

Le Tribunal ne peut siéger sur le territoire d'une tierce Puissance qu'avec l'assentiment de celle-ci.

Le siège une fois fixé ne peut être changé par le Tribunal qu'avec l'assentiment des Parties.

ARTICLE 61

Si le compromis n'a pas déterminé les langues à employer, il en est décidé par le Tribunal.

ARTICLE 62

Les Parties ont le droit de nommer auprès du Tribunal des

ARTICLE 58

When the *compromis* is settled by a commission, as contemplated in article 54, and in the absence of an agreement to the contrary, the commission itself shall form the Arbitration Tribunal.

ARTICLE 59

Should one of the arbitrators either die, retire, or be unable for any reason whatever to discharge his functions, the same procedure is followed for filling the vacancy as was followed for appointing him.

ARTICLE 60

The tribunal sits at The Hague, unless some other place is selected by the parties.

The tribunal can only sit in the territory of a third power with the latter's consent.

The place of meeting once fixed can not be altered by the tribunal, except with the consent of the parties.

ARTICLE 61

If the question as to what languages are to be used has not been settled by the *compromis*, it shall be decided by the tribunal.

ARTICLE 62

The parties are entitled to appoint special agents to attend

agents spéciaux, avec la mission de servir d'intermédiaires entre Elles et le Tribunal.

Elles sont en outre autorisées à charger de la défense de leurs droits et intérêts devant le Tribunal, des conseils ou avocats nommés par Elles à cet effet.

Les Membres de la Cour permanente ne peuvent exercer les fonctions d'agents, conseils ou avocats, qu'en faveur de la Puissance qui les a nommés Membres de la Cour.

the tribunal to act as intermediaries between themselves and the tribunal.

They are further authorized to retain for the defense of their rights and interests before the tribunal counsel or advocates appointed by themselves for this purpose.

The members of the Permanent Court may not act as agents, counsel, or advocates except on behalf of the power which appointed them members of the court.

ARTICLE 63

La procédure arbitrale comprend en règle générale deux phases distinctes: l'instruction écrite et les débats.

L'instruction écrite consiste dans la communication faite par les agents respectifs, aux membres du Tribunal et à la Partie adverse, des mémoires, des contre-mémoires et, au besoin, des répliques; les Parties y joignent toutes pièces et documents invoqués dans la cause. Cette communication aura lieu, directement ou par l'intermédiaire du Bureau International, dans l'ordre et dans les délais déterminés par le compromis.

Les délais fixés par le compromis pourront être prolongés de commun accord par les

ARTICLE 63

As a general rule, arbitration procedure comprises two distinct phases: pleadings and oral discussions.

The pleadings consist in the communication by the respective agents to the members of the tribunal and the opposite party of cases, counter-cases, and, if necessary, of replies; the parties annex thereto all papers and documents called for in the case. This communication shall be made either directly or through the intermediary of the International Bureau, in the order and within the time fixed by the *compromis*.

The time fixed by the *compromis* may be extended by mutual agreement by the parties, or

Parties, ou par le Tribunal quand il le juge nécessaire pour arriver à une décision juste.

Les débats consistent dans le développement oral des moyens des Parties devant le Tribunal.

ARTICLE 64

Toute pièce produite par l'une des Parties doit être communiquée, en copie certifiée conforme, à l'autre Partie.

ARTICLE 65

A moins de circonstances spéciales, le Tribunal ne se réunit qu'après la clôture de l'instruction.

ARTICLE 66

Les débats sont dirigés par le Président.

Ils ne sont publics qu'en vertu d'une décision du Tribunal, prise avec l'assentiment des Parties.

Ils sont consignés dans des procès-verbaux rédigés par des secrétaires que nomme le Président. Ces procès-verbaux sont signés par le Président et par un des secrétaires; ils ont seuls caractère authentique.

ARTICLE 67

L'instruction étant close, le Tribunal a le droit d'écarter du débat tous actes ou documents nouveaux qu'une des Parties

by the tribunal when the latter considers it necessary for the purpose of reaching a just decision.

The discussions consist in the oral development before the tribunal of the arguments of the parties.

ARTICLE 64

A certified copy of every document produced by one party must be communicated to the other party.

ARTICLE 65

Unless special circumstances arise, the tribunal does not meet until the pleadings are closed.

ARTICLE 66

The discussions are under the control of the President.

They are only public if it be so decided by the tribunal, with the assent of the parties.

They are recorded in minutes drawn up by the secretaries appointed by the President. These minutes are signed by the President and by one of the secretaries and alone have an authentic character.

ARTICLE 67

After the close of the pleadings, the tribunal is entitled to refuse discussion of all new papers or documents which one of the

voudrait lui soumettre sans le consentement de l'autre.

ARTICLE 68

Le Tribunal demeure libre de prendre en considération les actes ou documents nouveaux sur lesquels les agents ou conseils des Parties appelleraient son attention.

En ce cas, le Tribunal a le droit de requérir la production de ces actes ou documents, sauf l'obligation d'en donner connaissance à la Partie adverse.

ARTICLE 69

Le Tribunal peut, en outre, requérir des agents des Parties la production de tous actes et demander toutes explications nécessaires. En cas de refus, le Tribunal en prend acte.

ARTICLE 70

Les agents et les conseils des Parties sont autorisés à présenter oralement au Tribunal tous les moyens qu'ils jugent utiles à la défense de leur cause.

ARTICLE 71

Ils ont le droit de soulever des exceptions et des incidents. Les décisions du Tribunal sur ces points sont définitives et ne peuvent donner lieu à aucune discussion ultérieure.

ARTICLE 72

Les membres du Tribunal ont le droit de poser des questions

parties may wish to submit to it without the consent of the other party.

ARTICLE 68

The tribunal is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the tribunal has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

ARTICLE 69

The tribunal can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal the tribunal takes note of it.

ARTICLE 70

The agents and the counsel of the parties are authorized to present orally to the tribunal all the arguments they may consider expedient in defense of their case.

ARTICLE 71

They are entitled to raise objections and points. The decisions of the tribunal on these points are final and can not form the subject of any subsequent discussion.

ARTICLE 72

The members of the tribunal are entitled to put questions

aux agents et aux conseils des Parties et de leur demander des éclaircissements sur les points douteux.

Ni les questions posées, ni les observations faites par les membres du Tribunal pendant le cours des débats ne peuvent être regardées comme l'expression des opinions du Tribunal en général ou de ses membres en particulier.

ARTICLE 73

Le Tribunal est autorisé à déterminer sa compétence en interprétant le compromis ainsi que les autres actes et documents qui peuvent être invoqués dans la matière, et en appliquant les principes du droit.

ARTICLE 74

Le Tribunal a le droit de rendre des ordonnances de procédure pour la direction du procès, de déterminer les formes, l'ordre et les délais dans lesquels chaque Partie devra prendre ses conclusions finales, et de procéder à toutes les formalités que comporte l'administration des preuves.

ARTICLE 75

Les Parties s'engagent à fournir au Tribunal, dans la plus large mesure qu'Elles jugeront possible, tous les moyens nécessaires pour la décision du litige.

to the agents and counsel of the parties, and to ask them for explanations on doubtful points.

Neither the questions put nor the remarks made by members of the tribunal in the course of the discussions, can be regarded as an expression of opinion by the tribunal in general, or by its members in particular.

ARTICLE 73

The tribunal is authorized to declare its competence in interpreting the *compromis*, as well as the other acts and documents which may be invoked, and in applying the principles of law.

ARTICLE 74

The tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms, order, and time in which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

ARTICLE 75

The parties undertake to supply the tribunal, as fully as they consider possible, with all the information required for deciding the case.

ARTICLE 76

Pour toutes les notifications que le Tribunal aurait à faire sur le territoire d'une tierce Puissance contractante, le Tribunal s'adressera directement au Gouvernement de cette Puissance. Il en sera de même s'il s'agit de faire procéder sur place à l'établissement de tous moyens de preuve.

Les requêtes adressées à cet effet seront exécutées suivant les moyens dont la Puissance requise dispose d'après sa législation intérieure. Elles ne peuvent être refusées que si cette Puissance les juge de nature à porter atteinte à sa souveraineté ou à sa sécurité.

Le Tribunal aura aussi toujours la faculté de recourir à l'intermédiaire de la Puissance sur le territoire de laquelle il a son siège.

ARTICLE 77

Les agents et les conseils des Parties ayant présenté tous les éclaircissements et preuves à l'appui de leur cause, le Président prononce la clôture des débats.

ARTICLE 78

Les délibérations du Tribunal ont lieu à huis clos et restent secrètes.

Toute décision est prise à la majorité de ses membres.

ARTICLE 76

For all notices which the tribunal has to serve in the territory of a third contracting power, the tribunal shall apply direct to the government of that power. The same rule applies in the case of steps being taken to procure evidence on the spot.

The requests for this purpose are to be executed as far as the means at the disposal of the power applied to under its municipal law allow. They can not be rejected unless the power in question considers them calculated to impair its own sovereign rights or its safety.

The court will equally be always entitled to act through the power on whose territory it sits.

ARTICLE 77

When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case the President shall declare the discussion closed.

ARTICLE 78

The tribunal considers its decisions in private and the proceedings remain secret.

All questions are decided by a majority of the members of the tribunal.

ARTICLE 79

La sentence arbitrale est motivée. Elle mentionne les noms des arbitres; elle est signée par le Président et par le greffier ou le secrétaire faisant fonctions de greffier.

ARTICLE 80

La sentence est lue en séance publique, les agents et les conseils des Parties présents ou dûment appelés.

ARTICLE 81

La sentence, dûment prononcée et notifiée aux agents des Parties, décide définitivement et sans appel la contestation.

ARTICLE 82

Tout différend qui pourrait surgir entre les Parties, concernant l'interprétation et l'exécution de la sentence, sera, sauf stipulation contraire, soumis au jugement du Tribunal qui l'a rendue.

ARTICLE 83

Les Parties peuvent se réserver dans le compromis de demander la révision de la sentence arbitrale.

Dans ce cas, et sauf stipulation contraire, la demande doit être adressée au Tribunal qui a rendu la sentence. Elle ne peut être motivée que par la découverte

ARTICLE 79

The award must give the reasons on which it is based. It contains the names of the arbitrators; it is signed by the President and Registrar or by the Secretary acting as Registrar.

ARTICLE 80

The award is read out in public sitting, the agents and counsel of the parties being present or duly summoned to attend.

ARTICLE 81

The award, duly pronounced and notified to the agents of the parties, settles the dispute definitively and without appeal.

ARTICLE 82

Any dispute arising between the parties as to the interpretation and execution of the award shall, in the absence of an agreement to the contrary, be submitted to the tribunal which pronounced it.

ARTICLE 83

The parties can reserve in the *compromis* the right to demand the revision of the award.

In this case and unless there be an agreement to the contrary, the demand must be addressed to the tribunal which pronounced the award. It can only be

d'un fait nouveau qui eût été de nature à exercer une influence décisive sur la sentence et qui, lors de la clôture des débats, était inconnu du Tribunal lui-même et de la Partie qui a demandé la révision.

La procédure de révision ne peut être ouverte que par une décision du Tribunal constatant expressément l'existence du fait nouveau, lui reconnaissant les caractères prévus par le paragraphe précédent et déclarant à ce titre la demande recevable.

Le compromis détermine le délai dans lequel la demande de révision doit être formée.

made on the ground of the discovery of some new fact calculated to exercise a decisive influence upon the award and which was unknown to the tribunal and to the party which demanded the revision at the time the discussion was closed.

Proceedings for revision can only be instituted by a decision of the tribunal expressly recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.

The *compromis* fixes the period within which the demand for revision must be made.

ARTICLE 84

La sentence arbitrale n'est obligatoire que pour les Parties en litige.

Lorsqu'il s'agit de l'interprétation d'une convention à laquelle ont participé d'autres Puissances que les Parties en litige, celles-ci avertissent en temps utile toutes les Puissances signataires. Chacune de ces Puissances a le droit d'intervenir au procès. Si une ou plusieurs d'entre Elles ont profité de cette faculté, l'interprétation contenue dans la sentence est également obligatoire à leur égard.

ARTICLE 84

The award is not binding except on the parties in dispute.

When it concerns the interpretation of a convention to which powers other than those in dispute are parties, they shall inform all the signatory powers in good time. Each of these powers is entitled to intervene in the case. If one or more avail themselves of this right, the interpretation contained in the award is equally binding on them.

ARTICLE 85

Chaque Partie supporte ses propres frais et une part égale des frais du Tribunal.

ARTICLE 85

Each party pays its own expenses and an equal share of the expenses of the tribunal.

CHAPITRE IV. — *De la procédure sommaire d'arbitrage*

ARTICLE 86

En vue de faciliter le fonctionnement de la justice arbitrale, lorsqu'il s'agit de litiges de nature à comporter une procédure sommaire, les Puissances contractantes arrêtent les règles ci-après qui seront suivies en l'absence de stipulations différentes, et sous réserve, le cas échéant, de l'application des dispositions du chapitre III qui ne seraient pas contraires.

CHAPTER IV. — *Arbitration by Summary Procedure*

ARTICLE 86

With a view to facilitating the working of the system of arbitration in disputes admitting of a summary procedure, the contracting powers adopt the following rules, which shall be observed in the absence of other arrangements and subject to the reservation that the provisions of Chapter III apply so far as may be.

ARTICLE 87

Chacune des Parties en litige nomme un arbitre. Les deux arbitres ainsi désignés choisissent un surarbitre. S'ils ne tombent pas d'accord à ce sujet, chacun présente deux candidats pris sur la liste générale des Membres de la Cour permanente, en dehors des Membres indiqués par chacune des Parties. Elles-mêmes et n'étant les nationaux d'aucune d'Elles; le sort détermine lequel des candidats ainsi présentés sera le surarbitre.

Le surarbitre préside le Tribunal, qui rend ses décisions à la majorité des voix.

ARTICLE 87

Each of the parties in dispute appoints an arbitrator. The two arbitrators thus selected choose an umpire. If they do not agree on this point, each of them proposes two candidates taken from the general list of the members of the Permanent Court exclusive of the members appointed by either of the parties and not being nationals of either of them; which of the candidates thus proposed shall be the umpire is determined by lot.

The umpire presides over the tribunal, which gives its decisions by a majority of votes.

ARTICLE 88

A défaut d'accord préalable, le Tribunal fixe, dès qu'il est constitué, le délai dans lequel les deux Parties devront lui soumettre leurs mémoires respectifs.

ARTICLE 88

In the absence of any previous agreement the tribunal, as soon as it is formed, settles the time within which the two parties must submit their respective cases to it.

ARTICLE 89

Chaque Partie est représentée devant le Tribunal par un agent qui sert d'intermédiaire entre le Tribunal et le Gouvernement qui l'a désigné.

ARTICLE 89

Each party is represented before the tribunal by an agent, who serves as intermediary between the tribunal and the government who appointed him.

ARTICLE 90

La procédure a lieu exclusivement par écrit. Toutefois, chaque Partie a le droit de demander la comparution de témoins et d'experts. Le Tribunal a, de son côté, la faculté de demander des explications orales aux agents des deux Parties, ainsi qu'aux experts et aux témoins dont il juge la comparution utile.

ARTICLE 90

The proceedings are conducted exclusively in writing. Each party, however, is entitled to ask that witnesses and experts should be called. The tribunal has, for its part, the right to demand oral explanations from the agents of the two parties, as well as from the experts and witnesses whose appearance in court it may consider useful.

TITRE V. — DISPOSITIONS FINALES

PART V. — FINAL PROVISIONS

ARTICLE 91

La présente Convention dûment ratifiée remplacera, dans les rapports entre les Puissances contractantes, la Convention pour le règlement pacifique des conflits internationaux du 29 juillet 1899.

ARTICLE 91

The present convention, duly ratified, shall replace, as between the contracting powers, the convention for the pacific settlement of international disputes of the 29th July, 1899.

ARTICLE 92

La présente Convention sera ratifiée aussitôt que possible.

ARTICLE 92

The present convention shall be ratified as soon as possible.

Les ratifications seront déposées à La Haye.

Le premier dépôt de ratifications sera constaté par un procès-verbal signé par les représentants des Puissances qui y prennent part et par le Ministre des Affaires Étrangères des Pays-Bas.

Les dépôts ultérieurs de ratifications se feront au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et accompagnée de l'instrument de ratification.

Copie certifiée conforme du procès-verbal relatif au premier dépôt de ratifications, des notifications mentionnées à l'alinéa précédent, ainsi que des instruments de ratification, sera immédiatement remise, par les soins du Gouvernement des Pays-Bas et par la voie diplomatique, aux Puissances conviées à la Deuxième Conférence de la Paix, ainsi qu'aux autres Puissances qui auront adhéré à la Convention. Dans les cas visés par l'alinéa précédent, ledit Gouvernement Leur fera connaître en même temps la date à laquelle il a reçu la notification.

ARTICLE 93

Les Puissances non signataires qui ont été conviées à la Deux-

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the representatives of the powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the powers invited to the Second Peace Conference, as well as to those powers which have adhered to the convention. In the cases contemplated in the preceding paragraph, the said Government shall at the same time inform the powers of the date on which it received the notification.

ARTICLE 93

Nonsignatory powers which have been invited to the Second

ième Conférence de la Paix pourront adhérer à la présente Convention.

Peace Conference may adhere to the present convention.

La Puissance qui désire adhérer notifie par écrit son intention au Gouvernement des Pays-Bas en lui transmettant l'acte d'adhésion qui sera déposé dans les archives dudit Gouvernement.

The power which desires to adhere notifies its intention in writing to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

Ce Gouvernement transmettra immédiatement à toutes les autres Puissances conviées à la Deuxième Conférence de la Paix copie certifiée conforme de la notification ainsi que de l'acte d'adhésion, en indiquant la date à laquelle il a reçu la notification.

This Government shall immediately forward to all the other powers invited to the Second Peace Conference a duly certified copy of the notification as well as of the act of adhesion, mentioning the date on which it received the notification.

ARTICLE 94

Les conditions auxquelles les Puissances qui n'ont pas été conviées à la Deuxième Conférence de la Paix, pourront adhérer à la présente Convention, formeront l'objet d'une entente ultérieure entre les Puissances contractantes.

ARTICLE 94

The conditions on which the powers which have not been invited to the Second Peace Conference may adhere to the present convention shall form the subject of a subsequent agreement between the contracting powers.

ARTICLE 95

La présente Convention produira effet, pour les Puissances qui auront participé au premier dépôt de ratifications, soixante jours après la date du procès-verbal de ce dépôt et, pour les Puissances qui ratifieront ultérieurement ou qui adhéreront, soixante jours après que la noti-

ARTICLE 95

The present convention shall take effect, in the case of the powers which were not a party to the first deposit of ratifications, sixty days after the date of the *procès-verbal* of this deposit, and, in the case of the powers which ratify subsequently or which adhere, sixty

fication de leur ratification ou de leur adhésion aura été reçue par le Gouvernement des Pays-Bas.

days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

ARTICLE 96

S'il arrivait qu'une des Puissances contractantes voulût dénoncer la présente Convention, la dénonciation sera notifiée par écrit au Gouvernement des Pays-Bas qui communiquera immédiatement copie certifiée conforme de la notification à toutes les autres Puissances en leur faisant savoir la date à laquelle il l'a reçue.

La dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée et un an après que la notification en sera parvenue au Gouvernement des Pays-Bas.

ARTICLE 96

In the event of one of the contracting parties wishing to denounce the present convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other powers informing them of the date on which it was received.

The denunciation shall only have effect in regard to the notifying power, and one year after the notification has reached the Netherland Government.

ARTICLE 97

Un registre tenu par le Ministère des Affaires Étrangères des Pays-Bas indiquera la date du dépôt de ratifications effectué en vertu de l'article 92 alinéas 3 et 4, ainsi que la date à laquelle auront été reçues les notifications d'adhésion (article 93 alinéa 2) ou de dénonciation (article 96 alinéa 1).

Chaque Puissance contractante est admise à prendre connaissance de ce registre et à en demander des extraits certifiés conformes.

ARTICLE 97

A register kept by the Netherland Minister for Foreign Affairs shall give the date of the deposit of ratifications effected in virtue of article 92, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (article 93, paragraph 2) or of denunciation (article 96, paragraph 1) have been received.

Each contracting power is entitled to have access to this register and to be supplied with duly certified extracts from it.

En foi de quoi, les Plénipotentiaires ont revêtu la présente Convention de leurs signatures.

Fait à La Haye, le dix-huit octobre mil neuf cent sept, en un seul exemplaire qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies certifiées conformes, seront remises par la voie diplomatique aux Puissances contractantes.¹

In faith whereof the plenipotentiaries have appended their signatures to the present convention.

Done at The Hague, the 18th October, 1907, in a single copy, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the contracting powers.¹

¹ RESOLUTION OF RATIFICATION BY THE SENATE OF THE UNITED STATES OF THE CONVENTION FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES, SIGNED AT THE HAGUE, 1907.

APRIL 2, 1908.

"*Resolved (two-thirds of the Senators present concurring therein)*, That the Senate advise and consent to the ratification of a convention signed by the delegates of the United States to the Second International Peace Conference, held at The Hague from June sixteenth to October eighteenth, nineteen hundred and seven, for the pacific settlement of international disputes, subject to the declaration made by the delegates of the United States before signing said convention, namely:

"Nothing contained in this convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions or policy or internal administration of any foreign state; nor shall anything contained in the said convention be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions."

"*Resolved further*, as a part of this act of ratification, that the United States approves this convention with the understanding that recourse to the permanent court for the settlement of differences can be had only by agreement thereto through general or special treaties of arbitration heretofore or hereafter concluded between the parties in dispute; and the United States now exercises the option contained in Article 53 of said convention, to exclude the formulation of the 'compromis' by the permanent court, and hereby excludes from the competence of the permanent court the power to frame the 'compromis' required by general or special treaties of arbitration concluded or hereafter to be concluded by the United States, and further expressly declares that the 'compromis' required by any treaty of arbitration to which the United States may be a party shall be settled only by agreement between the contracting parties, unless such treaty shall expressly provide otherwise."

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